

EXHIBIT 1

In the Matter of:

Nina Greene and Gerald Greene

vs.

Sears Protection Company, et al.

Christopher Jackman

August 22, 2017

REDACTED VERSION



Court Reporting Solutions

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IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA

CIVIL DIVISION

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NINA GREENE and GERALD GREENE|

Plaintiffs|

V. |

No. 1:15-CV-02546

SEARS PROTECTION COMPANY, |

SEARS ROEBUCK AND COMPANY AND|

SEARS HOLDING CORPORATION |

Defendants|
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Deposition of CHRISTOPHER JACKMAN

(REDACTED VERSION)

Washington, D.C.

Tuesday, August 22, 2017

9:31 a.m.

Job Number: CH-139244

Pages: 1-116

Reported by: Jennifer Bosley

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3 Baker & Hostetler, LLP	3 BY MS. HINES.....5
4 1050 Connecticut Avenue, NW, Suite 1100	4
5 Washington Square	5
6 Washington, D.C. 20036	6
7	7
8 Pursuant to notice, before Jennifer Bosley,	8 EXHIBITS
9 Court Reporter and Notary Public in and for the	9 (Retained by Counsel)
10 District of Columbia.	10 JACKMAN PAGE
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1 APPEARANCES	1 PROCEEDINGS
2 ON BEHALF OF THE PLAINTIFFS:	2 CHRISTOPHER JACKMAN
3 ANDREW J. BELLI, ESQUIRE	3 Having been duly sworn testified as follows:
4 Kaufman, Coren & Ress, P.C.	4 EXAMINATION BY COUNSEL FOR DEFENDANTS
5 Two Commerce Square	5 BY MS. HINES:
6 2001 Market Street, Suite 3900	6 Q Can you state your name.
7 Philadelphia, Pennsylvania 19103	7 A Christopher Jackman.
8 (215)735-8700	8 Q And common spelling?
9 abelli@kcr-law.com	9 A Oh, C-H-R-I-S-T-O-P-H-E-R, J-A-C-K-M-A-N.
10	10 Q Have you been deposed before?
11	11 A Yes.
12 ON BEHALF OF THE DEFENDANTS:	12 Q I'm going to go over the ground rules just
13 ERIN BOLAN HINES, ESQUIRE	13 to refresh your memory on that.
14 Baker & Hostetler, LLP	14 You understand you are under oath?
15 191 N. Wacker Drive, Suite 3100	15 A Yes.
16 Chicago, Illinois 60606	16 Q And you understand I'm an attorney
17 (312)416-6215	17 representing the defendants in this case?
18 ehines@bakerlaw.com	18 A Yes.
19	19 Q If you don't understand a question, ask me
20	20 to rephrase it. And if you don't ask me, can we agree
21 ALSO PRESENT: Madona Howard	21 that you understand the question?
22	22 A Yes.
23	23 Q The court reporter is taking everything down
24	24 here today. So let me finish the question before you
25	25 answer it, agreed?

2 (Pages 2 to 5)

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Page 6	<p>1 A Agreed.</p> <p>2 Q And it's important to speak verbally with</p> <p>3 not nods or "uh-huhs" so she can take down what you're</p> <p>4 saying.</p> <p>5 A Okay.</p> <p>6 Q And if at any time you need a break, just</p> <p>7 tell me. I would just ask that if there was a</p> <p>8 question pending that you finish answering the</p> <p>9 question.</p> <p>10 A Okay.</p> <p>11 Q Okay. Are you taking any medication or</p> <p>12 substance today that would affect your ability to</p> <p>13 testify truthfully or accurately?</p> <p>14 A No.</p> <p>15 Q Can you think of any reason why you could</p> <p>16 not answer the questions today completely, accurately,</p> <p>17 and truthfully?</p> <p>18 A No.</p> <p>19 Q And you understand that even though we're in</p> <p>20 an informal conference room that your testimony is</p> <p>21 taken under oath and has the same force and effect if</p> <p>22 given in a court of law?</p> <p>23 A Yes.</p> <p>24 Q And you understand that your testimony is</p> <p>25 subject to the penalties of perjury as if you were</p>
Page 7	<p>1 testifying in court?</p> <p>2 A I do, yes.</p> <p>3 Q Okay. I'm going to start with your</p> <p>4 background.</p> <p>5 A Okay.</p> <p>6 Q You graduated from Johns Hopkins in 2002,</p> <p>7 correct?</p> <p>8 A Yes.</p> <p>9 Q With a bachelor's in economics?</p> <p>10 A Correct.</p> <p>11 Q Okay. And then you received an MBA from</p> <p>12 Indiana University in 2014?</p> <p>13 A Correct.</p> <p>14 Q Was that in finance?</p> <p>15 A In management.</p> <p>16 Q Management, okay.</p> <p>17 A Yes.</p> <p>18 Q Okay. After graduating from Johns Hopkins</p> <p>19 in 2002, what did you do until February of 2014 before</p> <p>20 you started at LECG?</p> <p>21 A I worked at a number of firms. Before I</p> <p>22 worked at LECG, I worked at a company called Icon</p> <p>23 Office Solutions where I had a sales and marketing</p> <p>24 position for a year. I believe I left in July of</p> <p>25 2003.</p>
Page 8	<p>1 And then there was a space in between before</p> <p>2 I began working at LECG in February of 2004.</p> <p>3 Q Okay. And when you started at LECG, you</p> <p>4 were a Senior Associate, correct?</p> <p>5 A I was a Research Analyst ultimately promoted</p> <p>6 to Senior Associate.</p> <p>7 Q Okay, started as Research Analyst?</p> <p>8 A Yes. And then and after Research Analyst</p> <p>9 was Associate and then Senior Associate.</p> <p>10 Q What do you do in your job at LECG?</p> <p>11 A Gosh, a number of things. It was a support</p> <p>12 position supporting the various cases that we were</p> <p>13 working on. It was litigation consulting.</p> <p>14 I worked in the finance and damages division</p> <p>15 at LECG for much of my time. Before I left, for about</p> <p>16 a year, I was doing some more antitrust work while I</p> <p>17 was there. But it was a lot of data work, document</p> <p>18 review, preparation of backup materials, basically</p> <p>19 anything and everything that was required to support</p> <p>20 the case that I was on at the time.</p> <p>21 Q Did LECG do any other consulting other than</p> <p>22 for litigation?</p> <p>23 A I believe they did some business consulting</p> <p>24 as well. I wasn't involved with any of that.</p> <p>25 Q And did they represent plaintiffs?</p>
Page 9	<p>1 A Some, but it was mostly a</p> <p>2 defendant-side-job.</p> <p>3 Q And what type of cases, litigation?</p> <p>4 A All different kinds. You know, I did --</p> <p>5 again, I did finance and damages where it was a lot of</p> <p>6 valuation work.</p> <p>7 But just in the offices, I worked in -- they</p> <p>8 had a big energy department and airlines department</p> <p>9 related to the airlines litigation, environmental. I</p> <p>10 believe they had e-discovery work at the time,</p> <p>11 antitrust obviously was a big one.</p> <p>12 I'm trying to -- I'm sure there were many</p> <p>13 others that are slipping my mind right now. But they</p> <p>14 were involved in a lot of different kinds of</p> <p>15 litigation.</p> <p>16 Q Are they located in Virginia?</p> <p>17 A Well, LECG doesn't exist anymore. It went</p> <p>18 bankrupt. But it sort of has emerged as Berkeley</p> <p>19 Research Group or BRG. A lot of the same people are</p> <p>20 at that firm. And they are located in D.C. as well as</p> <p>21 Cambridge, Massachusetts; Emeryville, California; many</p> <p>22 other locations.</p> <p>23 Q Did you leave before they went out of</p> <p>24 business?</p> <p>25 A I did.</p>

3 (Pages 6 to 9)

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<p>1 Q And that was in September of 2008?</p> <p>2 A Correct.</p> <p>3 Q And you went to Econ One Research?</p> <p>4 A Yes.</p> <p>5 Q And tell me what type of consulting you did</p> <p>6 with Econ One?</p> <p>7 A Primarily antitrust and consumer fraud</p> <p>8 matters.</p> <p>9 Q Did you say "ranks"?</p> <p>10 A No, I'm sorry, consumer fraud and antitrust.</p> <p>11 MR. BELL: Matters.</p> <p>12 MS. HINES: Matters, okay.</p> <p>13 THE WITNESS: Oh, sorry.</p> <p>14 BY MS. HINES:</p> <p>15 Q And was it all litigation-related, your</p> <p>16 consulting?</p> <p>17 A I believe it was. There may have been one</p> <p>18 or two assignments that were business consulting, but</p> <p>19 I can't recall any specifics.</p> <p>20 Q Did you represent plaintiffs or defendants?</p> <p>21 A Primarily plaintiffs.</p> <p>22 Q Primarily plaintiffs. And do you recall the</p> <p>23 type of consumer fraud consulting matters?</p> <p>24 A It was -- there was a number of cases</p> <p>25 involving the automobile industry. I'm trying to</p>	<p>1 wanted to get out while I could. But then also I just</p> <p>2 felt professionally that I was just not getting the</p> <p>3 opportunities that I was hoping to get to advance</p> <p>4 professionally in my career. So I was looking for an</p> <p>5 alternative that would allow me to do that.</p> <p>6 Q Was it the advance on the type of cases you</p> <p>7 were consulting on?</p> <p>8 A I just think the amount of responsibility.</p> <p>9 But it was a big shop with a lot of people and a lot</p> <p>10 of staff, and it was harder to move ahead. So I</p> <p>11 wanted an opportunity where I would be able to do</p> <p>12 that.</p> <p>13 Q Now we're back to Advanced Analytical</p> <p>14 Consulting where you said your group from Econ One</p> <p>15 moved over to, correct?</p> <p>16 A Yes, correct.</p> <p>17 Q Okay. And what was your title when you</p> <p>18 moved over?</p> <p>19 A Economist.</p> <p>20 Q Is -- what does "economist" mean?</p> <p>21 A It means -- it could mean a lot of things.</p> <p>22 It's just a funny question because the titles mix and</p> <p>23 vary at different consulting firms. It was a senior</p> <p>24 staff position at Advanced Analytical Consulting</p> <p>25 Group. And, at that time, I was managing cases,</p>
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<p>1 think back. This goes back a little ways here, sorry.</p> <p>2 One had to do with the functionality of</p> <p>3 wireless connectivity in laptops. I'm sure there were</p> <p>4 a couple others. I apologize. I'm not thinking of</p> <p>5 them off the top of my head. We have done more</p> <p>6 antitrust work as of late. The consumer fraud matters</p> <p>7 were a bit earlier. So it's a little more difficult</p> <p>8 to recall.</p> <p>9 Q And were you promoted while you were there?</p> <p>10 A At Econ One?</p> <p>11 Q Uh-huh.</p> <p>12 A No, I believe I stayed a consultant while we</p> <p>13 were there.</p> <p>14 Q And then you left in March of 2011 to go to</p> <p>15 Advanced Analytical Consulting Group, correct?</p> <p>16 A Correct. The practice I -- maybe I should</p> <p>17 clarify a little bit. The practice that I was working</p> <p>18 with at Econ One moved as a whole to Advanced</p> <p>19 Consulting Group, so it was the same type of work at</p> <p>20 the new firm.</p> <p>21 Q And I forgot to ask you, why did you leave</p> <p>22 LECG?</p> <p>23 A Most -- well, a couple reasons. One, it did</p> <p>24 seem like the writing was on the wall, that the</p> <p>25 company was not heading in the right direction. So I</p>	<p>1 supporting a testifying expert. So, you know, I had a</p> <p>2 lot of responsibilities in doing that.</p> <p>3 Q So you were a consultant, but your title was</p> <p>4 Economist?</p> <p>5 A Right, because the work that we do is</p> <p>6 primarily, you know, economic consulting, so, yeah.</p> <p>7 Q Okay. And you continued doing litigation</p> <p>8 primarily?</p> <p>9 A Yes.</p> <p>10 Q Or exclusively?</p> <p>11 A I would say exclusively -- then, again,</p> <p>12 there might have been one or two occasional</p> <p>13 assignment, none that I'm thinking of specifically,</p> <p>14 but --</p> <p>15 Q And primarily plaintiffs?</p> <p>16 A Yes.</p> <p>17 Q Okay. And the types of matters at -- when</p> <p>18 you were at Advanced Analytical, was it antitrust and</p> <p>19 consumer fraud; or did that change?</p> <p>20 A Yeah, so it was the same type of work that</p> <p>21 we were doing at Econ One. I would say it started to</p> <p>22 become more antitrust than consumer fraud at that</p> <p>23 point but still a mix of the two.</p> <p>24 Q And were you promoted while you were there?</p> <p>25 A No, I stayed an economist while I was there.</p>

4 (Pages 10 to 13)

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<p style="text-align: right;">Page 14</p> <p>1 Q And in January 2013, you moved to Nathan 2 Associates? 3 A Correct. Again, with the same practice, we 4 moved again. 5 Q Okay. And why did the practice move? 6 A We just thought at the time that it would be 7 a better fit at Nathan that had -- it was a bigger 8 company, and it was a bit more -- it was a bit better 9 established in the areas of economic consulting that 10 we were in, so we thought we would have better support 11 from a company like Nathan at the time. 12 Q Did you come in as a Managing Director? 13 A No, I went in as Managing Economist; and I 14 was promoted to Managing Director. 15 Q And when were you promoted, after how much 16 time? 17 A I want to say it was April 2015. 18 Q Okay. And, again, you were doing 19 100 percent litigation consulting? 20 A Yes, yes. 21 Q And, again, primarily plaintiff? 22 A Yes. 23 Q Did you do any defendant work? 24 A At Nathan? 25 Q At Nathan.</p>	<p style="text-align: right;">Page 16</p> <p>1 correct? 2 A Correct. 3 Q And how were you able to do that living in 4 Virginia? 5 A Yeah. Well, it was a distance learning. It 6 was an online component. And then it had, you know, 7 where you would have to go for a week or two for 8 intensive like class exercises, things like that, not 9 a very fun time. 10 Q Okay. And then in October 2016, you 11 cofounded Monument Economics Group, correct? 12 A Yes. 13 Q And who did you cofound it with? 14 A With Russell Lamb. 15 Q And you are an Executive Vice President? 16 A Yes. 17 Q That's still your title? 18 A Yes. 19 Q How many employees does the company have? 20 A We have just lost a few and hired a few, so 21 I would say roughly 16. 22 Q And did the same group come over from Nathan 23 Associates that you had been working with? 24 A A large component of the practice that we 25 were working with at Nathan came with us.</p>
<p style="text-align: right;">Page 15</p> <p>1 A I don't recall having done any plaintiff 2 work. 3 Q Okay. Who did you work under? 4 A Primarily, a testifying expert by the name 5 Russell Lamb. 6 Q When did you start working with him? Was it 7 back at Econ One? 8 A Yes, September 2008. 9 Q So you first started working for him at 10 Econ One? 11 A Correct. 12 Q I want to make sure it wasn't the other 13 place, not LECG? 14 A No. 15 Q Okay. And tell me the types of cases you 16 were working on at Nathan Associates. 17 A These were primarily plaintiffs' class 18 action antitrust matters mostly dealing with 19 allegations of price fixing, some monopolization 20 allegations. 21 I would say that was the majority of it. 22 There was some consumer fraud matters that we worked 23 on at the time, but that would be the majority of it. 24 Q And you obtained your MBA from Indiana 25 University while you were working at Nathan; is that</p>	<p style="text-align: right;">Page 17</p> <p>1 Q And since you have been at Monument, are you 2 doing all litigation consulting? 3 A We have so far. You know, we are looking to 4 branch out into other areas. But as of this point, 5 the work that we have done has been all litigation. 6 Q And can you tell me if it's plaintiff or 7 defendant. 8 A It is -- the work that I have done has been 9 plaintiffs' work. We have another Vice President who 10 does securities litigation matters. And it's possible 11 she has done some defendants' side work. I'm not 12 exactly sure. But as far as the work I have done, 13 it's been plaintiffs' work. 14 Q Okay. All right. I'm going to show you a 15 report. 16 A Okay. 17 Q It should be in here. 18 A Bear with me a second. Here's one copy. 19 (Jackman Exhibit 1 was marked for 20 identification and was retained by counsel.) 21 BY MS. HINES: 22 Q So let me show you what's marked as Exhibit 23 Jackman 1. 24 (Discussion off the record.) 25 BY MS. HINES:</p>

5 (Pages 14 to 17)

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<p>1 Q Okay. Can you turn to Exhibit A --</p> <p>2 A Sure.</p> <p>3 Q -- which is your CV. I just have a few</p> <p>4 questions.</p> <p>5 On the first page, you discuss -- oh, no, on</p> <p>6 the first page of your report actually, you discuss in</p> <p>7 your background, Implicit Pricing Associated with</p> <p>8 Bundled Goods.</p> <p>9 A Correct.</p> <p>10 Q Can you explain that. Is that with regard</p> <p>11 to the price fixing you were talking about earlier?</p> <p>12 A No. It dealt more with certain consumer</p> <p>13 fraud matters.</p> <p>14 Q Okay.</p> <p>15 A For instance, the example of wireless</p> <p>16 functionality in a laptop computer. Wireless</p> <p>17 functionality is one of many components, features of a</p> <p>18 laptop.</p> <p>19 So when you're analyzing prices for laptops,</p> <p>20 it's a way of teasing out the value or the component</p> <p>21 of the price that deals with a specific component of</p> <p>22 the products.</p> <p>23 So, for instance, we'd be teasing out the</p> <p>24 value of the wireless technology in the laptop.</p> <p>25 Q Okay. Thank you. Okay. You also mention</p>	<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16 (THIS CONCLUDES THE CONFIDENTIAL PORTION)</p> <p>17 BY MS. HINES:</p> <p>18 Q When you say, Processing the data into</p> <p>19 usable formats --</p> <p>20 A Yes.</p> <p>21 Q -- what does that mean?</p> <p>22 A So the data that ultimately needed to be</p> <p>23 used, it was very very large in size; and it couldn't</p> <p>24 be processed using something more user-friendly like</p> <p>25 Microsoft Excel. And the data were also a little bit</p>
Page 19	Page 21
<p>1 Financial Modeling --</p> <p>2 A Yes.</p> <p>3 Q -- that you have done. Can you elaborate on</p> <p>4 that.</p> <p>5 A That dealt mostly -- when I was working at</p> <p>6 LECG, I did valuation work in their Finance and</p> <p>7 Damages Group. So we would value company's assets,</p> <p>8 securities, whatever needed to be valued.</p> <p>9 So that would involve modeling like a</p> <p>10 discounted cash flow or, you know, various asset or</p> <p>11 income or market-based analyses, but basically trying</p> <p>12 to determine the value of an asset, a company, a</p> <p>13 security, something like that.</p> <p>14 Q Okay. And you also spoke about asset</p> <p>15 security valuations.</p> <p>16 Is that the same?</p> <p>17 A Yes.</p> <p>18 Q Got it. Okay. So you said that you have</p> <p>19 been deposited before.</p> <p>20 A Yes.</p> <p>21 Q How many times?</p> <p>22 A One other time.</p> <p>23 (THE FOLLOWING PORTION WAS DESIGNATED AS</p> <p>24 CONFIDENTIAL AND IS BOUND SEPARATELY)</p> <p>25</p>	<p>1 messy, so it had to be cleaned. "Messy" is not a</p> <p>2 technical term I realize. But a lot of times, you</p> <p>3 know, when you get data, there is variables or parts</p> <p>4 of it you can't readily interpret so you have to</p> <p>5 analyze to be able to understand it better. And once</p> <p>6 you do, you, what we say, you clean it or you scrub</p> <p>7 it. But, basically, you get it into a more</p> <p>8 user-friendly format.</p> <p>9 So to do that, we have to load those data</p> <p>10 into -- I believe we use SAS. But you want to use a</p> <p>11 sophisticated programming software like a SAS or a</p> <p>12 Stata which will allow you to process very large</p> <p>13 databases, clean them, get them in a user-ready</p> <p>14 format, and then process them so you can analyze them</p> <p>15 in whichever you would like to do.</p> <p>16 Q SAS or Stata, those are?</p> <p>17 A Those are two commonly used data processing</p> <p>18 or programming software, platform. SAS is just,</p> <p>19 S-A-S; and Stata, S-T-A-T-A.</p> <p>20 Q Did you represent one of the parties in that</p> <p>21 case?</p> <p>22 A The plaintiffs, yes.</p> <p>23 Q Was that a class action?</p> <p>24 A Yes.</p> <p>25 Q And you provided an expert report on behalf</p>

6 (Pages 18 to 21)

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<p>1 of the plaintiffs?</p> <p>2 A Yes.</p> <p>3 Q And did you provide testimony?</p> <p>4 A I was just -- I was deposed. That's it.</p> <p>5 Q And is that case still pending?</p> <p>6 A They have entered -- the Judge has approved</p> <p>7 a preliminary settlement. That's as far as I know</p> <p>8 about where it stands.</p> <p>9 Q Can you, without breaching your NDA, state</p> <p>10 what the opinion was that you provided in that case?</p> <p>11 A No, I'm not sure if I can -- I don't recall</p> <p>12 the specifics of the confidentiality agreement, so I'm</p> <p>13 not sure if I can.</p> <p>14 Q Well, are you aware of what was filed in the</p> <p>15 public record?</p> <p>16 A My report was filed under seal, I believe.</p> <p>17 So I don't know what aspects can be made public. I</p> <p>18 don't know if there was a redacted version made</p> <p>19 public. So I'm just not sure is the honest answer.</p> <p>20 Q Can you state what the plaintiffs would have</p> <p>21 put in their pleadings or motions, what -- the</p> <p>22 conclusion?</p> <p>23 A The allegation basically was that they</p> <p>24 purchased protection for upholstered and leather</p> <p>25 furniture, like a liquid protection to prevent</p>	<p>1 have been applied to make sure it's a net sales</p> <p>2 number.</p> <p>3 And then we also had separate data on the</p> <p>4 amounts of barrels of the protectant that they</p> <p>5 purchased and so getting those data read into a usable</p> <p>6 database format.</p> <p>7 And then it was a comparison of the amount</p> <p>8 they purchased versus the amount they would have</p> <p>9 needed to apply to the pieces of furniture in order to</p> <p>10 have adequately protected them based on their</p> <p>11 recommendations for that.</p> <p>12 Q And was that methodology created for --</p> <p>13 expressly for testifying -- or providing your report</p> <p>14 in that matter?</p> <p>15 A Yes.</p> <p>16 Q Do you know if the defendants moved to</p> <p>17 exclude your testimony?</p> <p>18 A They did.</p> <p>19 Q And do you know what the outcome of that</p> <p>20 was?</p> <p>21 A It didn't -- it was never decided on -- the</p> <p>22 settlement agreement was reached before.</p> <p>23 Q And you said that now it's been approved for</p> <p>24 settlement, right?</p> <p>25 A Yes, as far as I understand, yes.</p>
Page 23	Page 25
<p>1 staining or other damage.</p> <p>2 And the allegation was that the pieces of</p> <p>3 furniture either weren't treated at all or were not</p> <p>4 adequately treated with enough protectant.</p> <p>5 Q Okay. And your opinion was that they were</p> <p>6 not treated?</p> <p>7 A I didn't have an opinion about liability. It</p> <p>8 was more just -- I was running certain calculations</p> <p>9 based on the amount of protectant that Rooms To Go</p> <p>10 purchased and the amount of furniture that they sold</p> <p>11 with the protection agreement and ransom calculations</p> <p>12 based off of that.</p> <p>13 Q So it was sort of like a Scotchgard type of</p> <p>14 protectant?</p> <p>15 A Yeah, you can spray it on, or you can rub it</p> <p>16 on.</p> <p>17 Q Is there -- did you use a methodology in</p> <p>18 that opinion that you could describe in general terms?</p> <p>19 A Basically -- I'm trying to think. The heavy</p> <p>20 lifting of the analysis was getting the data into a</p> <p>21 workable format, again, because it was spread out over</p> <p>22 a number of data sets that were produced. So it's</p> <p>23 reading it into SAS, stacking the data, making sure</p> <p>24 everything lines up, that there aren't duplicates,</p> <p>25 applying any sort of credits or rebates that might</p>	<p>1 Q And are there any other cases where you have</p> <p>2 provided testimony at deposition or at a trial?</p> <p>3 A No.</p> <p>4 Q And that Hankinson matter was 2015, correct?</p> <p>5 A Sixteen. It was last year.</p> <p>6 Q Okay. On your CV which is Exhibit A to your</p> <p>7 report, you have 22 matters, if I counted correctly,</p> <p>8 listed.</p> <p>9 A I'll stipulate to that unless you want me to</p> <p>10 count.</p> <p>11 Q And are these matters where you only</p> <p>12 provided consulting services?</p> <p>13 A Yes, in support of another testifying</p> <p>14 expert.</p> <p>15 Q And was that Mr. Lamb?</p> <p>16 A Yes.</p> <p>17 Q Was there -- did you provide consulting for</p> <p>18 anyone else to testify other than Mr. Lamb in the</p> <p>19 matters that you listed?</p> <p>20 A I'd have to go back and look it over. I see</p> <p>21 at least one. And I'm looking because I know I have</p> <p>22 supported this person twice. I don't know if it's on</p> <p>23 here.</p> <p>24 But the McDonough, et al. v. TOYS "R" US</p> <p>25 case on Page 4 of the CV, I supported an expert by the</p>

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<p style="text-align: right;">Page 26</p> <p>1 name of Marty Asher, A-S-H-E-R. And I also supported 2 him in a price fixing case in Canada dealing with 3 Cathode ray tube televisions. And that matter is 4 ongoing. 5 Q That matter is ongoing? 6 A Yes. But I don't see it here on my CV. 7 Q Do you know why you didn't list it? 8 A Probably just an oversight, no other reason. 9 Q And in how many of these matters was your 10 client a plaintiff? 11 A I believe all of them. 12 Q Okay. And are there other matters that you 13 provided consulting services for that aren't on this 14 list? 15 A Going back -- yes, yes, there are. 16 Q Was this chronological? 17 A Close to it. There might be a little that 18 are out of order as some of them are overlapping, so 19 when a report was actually filed or testimony given. 20 But, largely, it's chronological. 21 But, I mean, for instance, the first one is 22 the LECG matter in Canada; and that case is actually 23 still ongoing. So the case is in Canada. 24 Q Oh, is that the one with Marty Asher? 25 A No. So that's LCD televisions. Russell</p>	<p style="text-align: right;">Page 28</p> <p>1 for admissibility? 2 A Oh, gosh, I don't remember that 3 specifically. I'd have to go back and check. 4 Q Okay. At this point, you said Monument 5 Economics is providing litigation consulting only? 6 A At this point, yes, yes. 7 Q Okay. Okay. Do you charge your clients by 8 the billable hour for your services? 9 A Yes. 10 Q Okay. Okay. In your background, do you 11 have experience with retail services contracts? 12 A No. 13 Q Do you have any specialized training in 14 retail services contracts or education? 15 A No. 16 Q Okay. You do have one publication that's 17 listed. 18 A Yes. 19 Q And I do have a copy of it which I'm going 20 to have to dig out. 21 (Jackman Exhibit 2 was marked for 22 identification and was retained by counsel.) 23 BY MS. HINES: 24 Q Okay. I'm handing you what's marked as 25 Jackman Exhibit 2.</p>
<p style="text-align: right;">Page 27</p> <p>1 Lamb was the expert on that one. Marty Asher was the 2 expert on the Cathode ray tube televisions and 3 computer monitors. 4 Q Are there any other class actions not on 5 this list that you have consulted on? 6 A Almost certainly. I have to sit and think 7 of any others; but, yeah, almost certainly there are. 8 Q And would that have been on behalf of a 9 plaintiff? 10 A Yes. Yes. 11 Q So you have four consumer fraud class 12 actions that you have listed? 13 A That's probably right. That's probably 14 correct. 15 Q Okay. And those would have been for 16 Mr. Lamb's testimony? 17 A Yes. He'd be upset if I didn't correct you 18 and say Dr. Lamb. 19 Q Thank you. Okay, I'll refer to him as 20 Dr. Lamb. 21 A Even though he's not here, it would crush 22 him if I didn't. 23 Q Okay. On those consumer fraud matters, do 24 you recall what the -- whether the testimony was 25 provided by Dr. Lamb in the case if it was challenged</p>	<p style="text-align: right;">Page 29</p> <p>1 A Yes. 2 Q And do you recognize this article? 3 A Yes, I do. 4 Q Okay. What is this? 5 A This is -- it's an article in the form of a 6 roundtable discussion that Russell Lamb and myself 7 participated in in Corporate Disputes Magazine back in 8 2014. October 2014 it was published. 9 Q Is this an online magazine? 10 A Yes. 11 Q Online only? 12 A Yes -- I think -- I think it's possible to 13 subscribe to the print version if you're a subscriber, 14 but primarily it's distributed online. 15 Q Do you know who the subscription base is, 16 the demographic? 17 A I don't. I believe it primarily deals with 18 litigation matters. So I think there is a lot of law 19 firms or, you know, lawyers or attorneys that 20 subscribe to that. But beyond that, I'm not really 21 sure. 22 Q Okay. Page 98 has your Bio. And on the 23 last sentence, if you can read it -- the print is a 24 little small -- 25 A Yes.</p>

8 (Pages 26 to 29)

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<p style="text-align: right;">Page 30</p> <p>1 Q -- it lists the industries where you have 2 experience. 3 A Yes. 4 Q And I do not see listed in there retail. 5 MR. BELLI: Is that a question? 6 BY MS. HINES: 7 Q Is that accurate? 8 A Retail is not listed here. Certain -- I'm 9 just reading, like baby products, for instance, 10 consumer electronics are sold at retail. So, in a 11 sense, that could include retail. But retail as a 12 separate industry is not listed here. 13 Q Okay. And it does not indicate that you 14 provide in your Bio consulting for companies; is that 15 correct? 16 A Well, it says I specialize in supporting 17 analyses for expert testimony in litigation and 18 business matters; so that is meant to include 19 companies. But it doesn't say it explicitly. 20 Q Okay. What percent of your practice would 21 you account for consulting defendants in litigation? 22 A Defendants. I would say we have worked on 23 one or two matters on behalf of defendants as far as 24 percent. I'm not sure, but it would be quite low. 25 The vast majority of what we have done is plaintiffs'</p>	<p style="text-align: right;">Page 32</p> <p>1 And do you still believe this to be true? 2 A Yes. 3 Q And how can this proxy information 4 negatively affect the reliability and accuracy? 5 A Well, oftentimes, the best source of data 6 and information is coming directly from the entities 7 which are trying to analyze in that particular matter. 8 And it can be different in that -- you know, it varies 9 from matter to matter, of course. 10 But, you know, you would seek to obtain that 11 from, you know -- if we're working on the plaintiff's 12 side, from the defendants as much as possible. And as 13 you move away from that to -- you know, if you had to 14 supplement some data with data in the public domain, 15 for instance, it's probably not directly related to a 16 single entity, a single company, for instance. 17 And so while it might constitute a 18 reasonable substitute for any missing data that the 19 defendants didn't provide, it's not as accurate as if 20 you actually had that information from the defendant. 21 So that's how it can be somewhat less reliable than if 22 you had it from the defendant directly. 23 Q And where is proxy information -- where do 24 you find that in your experience wherever you found 25 that? You mentioned public domain.</p>
<p style="text-align: right;">Page 31</p> <p>1 side work. 2 Q When you say one to two, do you mean at 3 Monument or -- 4 A No. Going back -- well, going back to my 5 time at LECG, all of my cases were on the defendant 6 side. I was junior staff at that time, so I didn't 7 really include that as the higher-level work that I 8 have done in this industry. 9 But since leaving LECG in September 2008, I 10 would say there's only been one or two cases done on 11 the defense side. 12 Q Okay. Now, on Page 99, you are quoted as 13 saying in the first sentence, "One of the most 14 challenging aspects of the evaluation of damages is 15 obtaining complete and reliable data and information 16 to be used as inputs into a damages analysis." 17 Do you still believe this to be true? 18 A Yes. 19 Q And in that same paragraph you state, 20 "Should this information not be available elsewhere, 21 the damages expert must then seek to obtain reasonable 22 and reliable proxy information." 23 And in the last sentence, you say, "This 24 process can also negatively impact the reliability and 25 accuracy of his or her measurement of damages."</p>	<p style="text-align: right;">Page 33</p> <p>1 A That's one area, yes. 2 Q Where else? 3 A You know, sometimes you can get it from 4 downstream companies. So, for instance, if you're 5 missing some sales data from a defendant, you might 6 have data from a direct purchaser or many direct 7 purchasers that can identify the purchases they made 8 from that defendant. And so you can use that as a 9 proxy to fill in for missing data. 10 Q Is it your opinion that the data and 11 information you used for your report in this case was 12 complete and reliable? 13 A Could you repeat that question. 14 Q Would you agree that -- let me take a step 15 back. Okay. If the data and information you used for 16 your opinion in this case was not complete and 17 reliable, would that have a negative impact on the 18 accuracy of the damages? 19 A Well, to start, I didn't use any data or 20 information in my report. But I think you're 21 referring to the data or information that I describe 22 being available. 23 Q Yes. 24 A Okay. So in that regard, the answer is it 25 depends. You simply don't know until you know what</p>

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<p>1 data are available and what are missing. Sometimes</p> <p>2 you can make assumptions that don't have any real</p> <p>3 impact on the reliability or accuracy of the analysis.</p> <p>4 So it really just depends.</p> <p>5 Q Okay. All right, now, on 103 of this</p> <p>6 article -- I'm trying find where you state -- "As</p> <p>7 discussed earlier, one of the biggest challenges an</p> <p>8 expert faces in evaluating damages is when the data</p> <p>9 produced in the matter is incomplete or otherwise</p> <p>10 unreliable in one way or another."</p> <p>11 And you still agree with this statement?</p> <p>12 MR. BELLI: Is that on Page 103?</p> <p>13 MS. HINES: Let me see, maybe I picked the</p> <p>14 wrong page.</p> <p>15 MR. BELLI: Okay. So it starts on Page 102.</p> <p>16 MS. HINES: Thank you, sorry.</p> <p>17 MR. BELLI: Okay.</p> <p>18 MS. HINES: It actually starts on 103. It's</p> <p>19 in the middle of the first sentence.</p> <p>20 MR. BELLI: Sorry, I was looking at the</p> <p>21 statement that started over here.</p> <p>22 MS. HINES: That's okay.</p> <p>23 BY MS. HINES:</p> <p>24 Q Do you still agree with that sentence?</p> <p>25 A Yes.</p>	<p>1 filing of this case?</p> <p>2 A No.</p> <p>3 Q And there are no other publications on your</p> <p>4 CV.</p> <p>5 Do you have any that are not listed?</p> <p>6 A No, I do not.</p> <p>7 Q Okay. Whenever you're ready for a break.</p> <p>8 A Okay, I'm fine if you want to keep going.</p> <p>9 Q Okay. All right. Have you ever worked with</p> <p>10 Kaufman, Coren & Ress before?</p> <p>11 A I do not believe so.</p> <p>12 Q Okay. How about Deborah Gross, an attorney</p> <p>13 at Kaufman, Coren & Ress?</p> <p>14 A No.</p> <p>15 Q Any of the plaintiff's attorneys in this</p> <p>16 case?</p> <p>17 A Yeah, we have done a number of cases with</p> <p>18 Miller Law Firm in Chicago.</p> <p>19 (THE FOLLOWING PORTION WAS DESIGNATED AS</p> <p>20 CONFIDENTIAL AND IS BOUND SEPARATELY)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 Q Okay. Okay. You also comment on the</p> <p>2 Comcast case --</p> <p>3 A Yes.</p> <p>4 Q -- and how that has an impact on an expert</p> <p>5 because it's created heightened burden to ensure that</p> <p>6 the damage analysis is consistent with the allegations</p> <p>7 in this case.</p> <p>8 A Yes.</p> <p>9 MR. BELLI: Sorry, it says "the" case. I</p> <p>10 don't --</p> <p>11 MS. HINES: Oh, "in the case," yes, yes.</p> <p>12 BY MS. HINES:</p> <p>13 Q And do you think -- would you agree that</p> <p>14 that applies to this case?</p> <p>15 A I would say so, yes.</p> <p>16 Q And do you agree that your methodology in</p> <p>17 this case is consistent with the allegations in the</p> <p>18 case?</p> <p>19 A I believe that it is.</p> <p>20 Q You also state on Page 99 that companies</p> <p>21 should consider engaging a damages expert in addition</p> <p>22 to legal counsel before pursuing a commercial dispute</p> <p>23 as a recommendation.</p> <p>24 A Yes.</p> <p>25 Q Did you consult with the plaintiffs prior to</p>	<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24 (THIS CONCLUDES THE CONFIDENTIAL PORTION)</p> <p>25 BY MS. HINES:</p>

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<p>1 Q Okay. Did anyone else assist in that --</p> <p>2 A It's possible with some auditing at the end</p> <p>3 because we usually like somebody who hasn't worked</p> <p>4 directly with the data to make sure it's correct. I</p> <p>5 don't remember who that was at the time.</p> <p>6 Q Let me go back and ask you, when you stated</p> <p>7 that you have assisted Miller Law Firm in litigation</p> <p>8 matters --</p> <p>9 A Yes.</p> <p>10 Q -- has that been for plaintiffs?</p> <p>11 A Yes.</p> <p>12 Q Are any of those matters listed on your CV?</p> <p>13 A Yes -- oh, yes, almost certainly. So on</p> <p>14 Page 2, the Polyurethane Foam Antitrust Litigation</p> <p>15 was --</p> <p>16 Q What page -- oh, 2. I'm sorry.</p> <p>17 A Page 2, yes.</p> <p>18 Q All right.</p> <p>19 A That is the only one that's on my CV, but we</p> <p>20 have assisted them in others that just didn't make it</p> <p>21 on my CV.</p> <p>22 Q How long have you been working with them?</p> <p>23 A I believe they retained us on polyurethane</p> <p>24 foam. And when I say "us," Russell Lamb being the</p> <p>25 expert in our team who supports him. But primarily</p>	<p>1 (THE FOLLOWING PORTION WAS DESIGNATE AS</p> <p>2 CONFIDENTIAL AND IS BOUND SEPARATELY)</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13 (THIS CONCLUDES THE CONFIDENTIAL PORTION)</p> <p>14 BY MS. HINES:</p> <p>15 Q How many hours, prior to today, have you</p> <p>16 worked on this case?</p> <p>17 A I would have to check the invoice. I'm not</p> <p>18 sure.</p> <p>19 Q And your fee in this is not based on the</p> <p>20 outcome of this case; is that correct?</p> <p>21 A That is correct.</p> <p>22 Q Did you apply any discounts for your work on</p> <p>23 this case?</p> <p>24 A No.</p> <p>25 Q Is there anything else included in your fee</p>
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<p>1 pertaining the expert back in late 2010, 2011 to start</p> <p>2 with that.</p> <p>3 Q Is that an antitrust matter?</p> <p>4 A Yes, indirect purchaser price fixing matter.</p> <p>5 Q Okay. Back to this report. How many</p> <p>6 people -- or did anyone assist you in preparing the,</p> <p>7 report for this?</p> <p>8 A I had one Senior Research Analyst help me.</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 besides hours multiplied by the rates that you have</p> <p>2 not already stated?</p> <p>3 A The only other thing I could think of is if</p> <p>4 we had late nights and someone expensed a meal or a</p> <p>5 late night ride home. Typically, we'll pass that</p> <p>6 through to the client. I can't recall if that</p> <p>7 happened this matter, but we could check and see if if</p> <p>8 it is.</p> <p>9 MS. HINES: Can we take a break?</p> <p>10 MR. BELL: Yeah.</p> <p>11 (A brief break was taken.)</p> <p>12 BY MS. HINES:</p> <p>13 Q So you provided an opinion in this case</p> <p>14 regarding a methodology to allow you to use data and</p> <p>15 information possessed by Sears to measure damages</p> <p>16 suffered from the putative classes upon the finding</p> <p>17 that the alleged misconduct took place; is that</p> <p>18 correct?</p> <p>19 A That's correct.</p> <p>20 Q And you provide opinion regarding</p> <p>21 methodology putative class based own breach of</p> <p>22 contract?</p> <p>23 A Correct.</p> <p>24 Q When did you develop the methodology used in</p> <p>25 this case?</p>

11 (Pages 38 to 41)

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<p style="text-align: right;">Page 42</p> <p>1 A I would say at some point in late June or 2 early July in the lead-up to the filing of my expert 3 report just in the course of researching the case, and 4 the various issues and understanding it better, is 5 when I started to form that opinion of the 6 methodology, also understanding the data that Sears 7 claims to have and how it -- how it's stored and how 8 it could be used.</p> <p>9 Q And was this methodology developed expressly 10 for this matter?</p> <p>11 A Yes.</p> <p>12 Q And with regard to the breach of contract 13 putative class, what is your opinion generally?</p> <p>14 A That a methodology is available that would 15 allow me to use data and information that appears more 16 likely than not to be maintained by Sears and could be 17 made available.</p> <p>18 That would allow me to measure damages 19 suffered by the breach of contract class without 20 resorting to individualized inquiry.</p> <p>21 Q All right. I'm going to go through first 22 generally what your opinion proposes --</p> <p>23 A Okay.</p> <p>24 Q -- because I want to understand, make sure I 25 understand what it is.</p>	<p style="text-align: right;">Page 44</p> <p>1 assumption from?</p> <p>2 A That was provided to me from counsel.</p> <p>3 Q And you have no other basis other than it 4 was provided to you by counsel?</p> <p>5 A Right. As I understand it, that's just 6 purely a legal matter. I have no opinion about that.</p> <p>7 Q And for the unjust enrichment claims, the 8 statute of limitation date is March 25th, 2005 that 9 you would apply for the relevant time period, correct?</p> <p>10 A For unjust enrichment?</p> <p>11 Q Unjust enrichment.</p> <p>12 A Yes, correct.</p> <p>13 Q And where did you get that date from?</p> <p>14 A Also from plaintiff's counsel.</p> <p>15 Q And for the Pennsylvania Consumer Fraud 16 claim?</p> <p>17 A Yes, March 25th, 2004 from plaintiffs' 18 counsel.</p> <p>19 Q Okay. And for all products Sears agreed to 20 cover, does that mean all products listed on an MPA?</p> <p>21 A Can you rephrase that question. I want to 22 make sure I understand.</p> <p>23 Q Okay. Are all the products listed on an MPA 24 certificate that a customer receives, are those all 25 the products that Sears agrees to cover that -- for</p>
<p style="text-align: right;">Page 43</p> <p>1 A Of course.</p> <p>2 Q Okay. You're going to create a data set of 3 MPAs in effect during the alleged breached contract 4 period which includes, among other things, a list of 5 all products Sears agreed to cover under those 6 agreements and the cost of coverage?</p> <p>7 A That would be part of it, yes.</p> <p>8 Q And then you will filter this for 9 aftermarket MPAs?</p> <p>10 A Yes.</p> <p>11 Q Okay. Why did you decide to use the 12 aftermarket MPA filter?</p> <p>13 A That's the -- to be consistent with the 14 class definition.</p> <p>15 Q Do you know why that's in the class 16 definition?</p> <p>17 A No.</p> <p>18 Q Okay. And your understanding is that this 19 filter is available?</p> <p>20 A Yes.</p> <p>21 Q You also state that the earliest date the 22 court could apply the statute of limitations would be 23 March 25th, 2005 for the breach of contract?</p> <p>24 A 2000 for the breach of contract.</p> <p>25 Q 2000, correct. Where did you get this</p>	<p style="text-align: right;">Page 45</p> <p>1 that consumer?</p> <p>2 A I believe so. But the -- the way I was 3 approaching that is it's my understanding that Sears 4 takes all the information, the relevant information, 5 from their MPA agreements and loads them into their 6 data warehouse. And, therefore -- and the data 7 warehouse is where they store all the information 8 about their MPA agreements that they have with 9 customers.</p> <p>10 So that would be -- the data warehouse, 11 itself, would be the primary source of that 12 information; and that's what I understand where the 13 MPA agreement and the covered products under those 14 agreements is kept.</p> <p>15 So I don't -- you know, I didn't review in 16 great detail, you know, MPA agreements on paper that 17 the customers received. But I know that the relevant 18 information is stored on the data.</p> <p>19 Q But you did review the one attached to tell 20 first of amended complaint?</p> <p>21 A That would be the green set of MPAs. I did 22 review those.</p> <p>23 Q Next, your opinion proposes to use the 24 eligible brands list effective at any point during the 25 relevant breach of contract, period, and create a data</p>

12 (Pages 42 to 45)

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<p style="text-align: right;">Page 46</p> <p>1 set for every brand product combination, for example, 2 Maytag refrigerator -- 3 A Yes. 4 Q -- and include any start or end date for 5 aftermarket MPA coverage eligibility that may have 6 occurred during the time period? 7 A Yes. So -- would you like me to unpack that 8 a little bit? 9 Q Yes. And this is on Page 10 of your report. 10 A Yes. 11 Q And go ahead and unpack that. 12 A So -- right, where it said, "start or end 13 date," that's probably "and/or end date." Basically, 14 as I understand it, Sears maintained an eligible 15 brands list going back as far as at least 1996. 16 When Mr. Setzer began working with the firm, 17 he recalled that they were in use going back at least 18 that far. And they list the brands and types of 19 products that are eligible for MPA coverage. 20 And over time, those lists were revised. 21 New products were oncoming or other products were 22 coming off. So that would mean that over the course 23 of any of the relevant time periods, there would be a 24 number of these eligible brands lists. 25 So what I would propose doing is loading all</p>	<p style="text-align: right;">Page 48</p> <p>1 basically what it is. It's a combination into one 2 data set. 3 Q Okay. And then this data set would allow 4 you to determine if a given product was covered by an 5 aftermarket MPA purchased during the relevant time 6 period if it was eligible at the time -- eligible for 7 coverage at the time of purchase? 8 A Yes, at the time of purchase. 9 Q Okay. And you would eliminate from this 10 data set any products that were eligible for this 11 potential class as we filtered it down during the -- 12 wait, let me step back. 13 You would eliminate the ones that were 14 eligible for coverage at the time of the purchase from 15 that group? 16 A Yes. So, basically, I'd look at the start 17 date of the MPA. And if it fell inside any of those 18 ranges of coverage between the start and end date, 19 then I would drop that from the MPA database because 20 that would signal that it was eligible for coverage as 21 of the time of the purchase. 22 Q And if the product became ineligible during 23 the term of the MPA, that was not factored into 24 whether it would be taken out of -- or whether it 25 would remain in the class or not?</p>
<p style="text-align: right;">Page 47</p> <p>1 of those lists into one database where you'd basically 2 stack that information. 3 And so for every combination of product 4 brand and product type, like Maytag refrigerator, I 5 would look across all those eligible brands lists 6 using the revision dates to determine when the 7 eligibility coverage started and when it ended, if it 8 ended. 9 Now, it's possible that I'd only ever have 10 an end date because going back as far as the start of 11 the relevant time period, a certain product brand 12 combination has always been covered. 13 But I would want to find, during the 14 relevant time periods, the range, you know, the time 15 period or periods during the relevant time period 16 where a certain product brand combination had 17 coverage. And I'd want those start and end dates. 18 Q Okay. When you said "stack the 19 information," can you explain that to me. 20 A Sure. It's just kind of a term we use when 21 we do data analysis. But, basically, you're taking 22 data that is similar or the same but comes from 23 multiple files or just different sources. And then 24 you want to basically combine it into one data set. 25 We typically use the term "stack." But that's</p>	<p style="text-align: right;">Page 49</p> <p>1 A That was not a -- it was just a -- it was a 2 binary decision as to whether or not it was eligible 3 as of the purchase date. Beyond that, it was not a 4 factor. 5 Q Okay. And then if this data is available, 6 the MPAs filtered out leaves a list of MPAs that Sears 7 agreed to cover but were not included on the eligible 8 brands list at the time they purchased the MPA? 9 A That's correct. 10 Q And this remaining list are those MPAs that 11 were breached; is that correct? 12 A Well -- you use the term "breach." I don't 13 have an opinion as of the liability of it. But 14 basically what it means to me in my analysis is that 15 those particular products were not covered under the 16 eligible brands list as of the time that they were 17 purchased. 18 Q Okay. Does this list include MPA renewals 19 for products that are no longer on the eligible brands 20 list at the time of renewal? 21 A Yes. 22 Q And is that because at the time of renewal, 23 those -- that brand was not listed on the eligible 24 brands list or was listed as nonrenewable? 25 A It was not listed on the eligible brands</p>

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1 list.

2 **Q** Okay. Then you state that there's data from
3 which you can determine the price paid by a putative
4 class member for MPA coverage for any products still
5 remaining in the data set?

6 A Correct.

7 **Q** Okay. And then you propose to collect the
8 refunds and credits issued to -- issued and fulfilled
9 by those remaining in the data set and that you would
10 credit those toward the cost of the MPA?

11 A Yes, for each product.

12 **Q** Okay. And if the cost of the MPA was
13 greater, then the refund or the credit, that
14 represents damages; is that correct?

15 A That's correct.

16 **Q** So your opinion does not actually calculate
17 the damages, it's just a methodology as to how damages
18 could be calculated?

19 A In this report, yes.

20 **Q** Okay. And for the unjust enrichment class,
21 it is the same except for the relevant time period; is
22 that correct?

23 A That's correct.

24 **Q** And for the Pennsylvania Consumer Fraud Act
25 claims, it is the same except for the relevant time

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1 flawed. You know, whether or not they did is up to
2 the trier of fact to determine. And if they determine
3 that, I assume that there would be no reason to
4 implement the methodology. But I wouldn't say that
5 the methodology, itself, is flawed.

6 **Q** It would affect the opinion to the extent
7 that it is contingent upon -- your opinion is
8 contingent upon that misconduct did occur?

9 A Yes.

10 **Q** And just to be clear, your opinion assumes
11 Sears breached the contract at the time the MPA was
12 entered into?

13 A Would you mind repeating that.

14 **Q** Your opinion assumes Sears breached the
15 contract at the time the consumer entered into the MPA
16 agreement?

17 A That is correct. That is consistent with
18 the class definition as I understand it. I'm assuming
19 all of those allegations are true.

20 **Q** And do you know how Sears failed to comply
21 with the contract if that is what --

22 A I don't have an opinion about that. I
23 didn't study that issue carefully. So I don't really
24 have an opinion about that. I just assume that they
25 did.

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1 period?

2 A The relevant time period; and, of course, I
3 would limit the data set to Pennsylvania residents.

4 **Q** Exactly, right. Thank you.

5 A Sure.

6 **Q** And you did not have any other opinions in
7 this case?

8 A Well, I have opinions about the availability
9 of the data that I could use to implement my
10 methodology; but beyond that, no.

11 **Q** Okay. And all of your opinions are based on
12 the data information that Sears appears to maintain?

13 A Yes.

14 **Q** And your opinions also are based on the
15 assumption that Sears violated the law?

16 A Would you say that again please.

17 **Q** In your report, you use the word "assuming
18 this conduct occurred" several times.

19 And your opinions are based on an assumption
20 that the misconduct alleged in the complaint?

21 A An assumption that it occurred, no opinion
22 as to whether or not it did.

23 **Q** If Sears did not, you know, commit this
24 misconduct, then would your methodology be flawed?

25 A Well, I wouldn't say the methodology is

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1 **Q** Okay. And the same thing with the unjust
2 enrichment, you don't have an opinion as to how Sears
3 was unjustly enriched?

4 A Correct.

5 **Q** And I'm going to ask you about the
6 Pennsylvania Consumer Fraud claim.

7 Do you know how Sears knowingly
8 misrepresented the MPAs to the plaintiffs?

9 A No, I don't have an opinion about that.

10 **Q** Okay. In your report, on Page 5, you state
11 that your understanding is that discovery is ongoing.

12 Do you see that?

13 A Yes.

14 **Q** What is that understanding based upon?

15 A Well, it's come to my attention that it
16 turns out it was a misunderstanding just in terms of
17 legal procedure. I can't recall specifically how I
18 got that understanding.

19 I know discovery is something that has been
20 a part of this case, and there has been some back and
21 forth on that. I had the misunderstanding that it was
22 still open. But it turns out that it is not, so that
23 is a mistake on my part.

24 **Q** I noticed you do not have a citation on
25 that.

14 (Pages 50 to 53)

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<p style="text-align: right;">Page 54</p> <p>1 A Right. It was a misunderstanding I had 2 dated into report. 3 Q Okay. I'm going to ask you some questions 4 about the Sears data. 5 A Okay. 6 Q Okay. Your opinion assumes that Sears could 7 retrieve data from its data warehouse going back at 8 least 20 years. And you cited Dainon Setzer's 9 testimony for this; is that right? 10 A For the 20 years? 11 Q Yes. 12 A I wouldn't say it assumes that. You know, 13 when I talk about the availability of data, I cite to 14 each ination since the testimony that I believe 15 supports that notion. 16 And so at his deposition, Mr. Setzer said 17 the information stored in the data warehouse goes back 18 at least 20 years. 19 Q And he stated that the data warehouse can 20 identify all MPAs in existence at any given time, 21 correct? 22 A Correct. 23 Q But didn't he actually state that he would 24 think the data would go back 20 years, not that he was 25 absolutely certain?</p>	<p style="text-align: right;">Page 56</p> <p>1 existed on January 1st, 2012 versus January 1st, 2015? 2 A Yes. 3 Q And the answer which starts on Line 19, "I 4 don't know, but I would think yes. I would think we 5 could probably figure out a way to write code for 6 that." 7 A Yes, I see that. That's with respect to the 8 time period. 9 Q He thinks; he's not certain. 10 A He thinks, yes, right. I have elsewhere 11 seen analyses that they have done on an annual basis 12 analyzing MPAs and, you know, profit and loss they 13 have earned on them or just generally how many were 14 cancelled. 15 So while my citation was limited to this, it 16 is further informed by. 17 Q Is that why your opinion is that it is 18 likely that Sears has this data? 19 A It is in the sense that I did not have the 20 data in front of me to confirm it with my own eyes. 21 So just generally speaking, yes, that's why to me it's 22 more likely than not that they have it. But, yeah, I 23 could not confirm it with the data. 24 Q On Page 9 of your opinion in Paragraph 17, 25 you state that the data set can be queried for each</p>
<p style="text-align: right;">Page 55</p> <p>1 A I would have to look at his deposition 2 testimony to refresh my memory. I don't recall that 3 as I sit here. 4 Q I have that. 5 A Okay. 6 Q Let me pull his transcript. I know I saw 7 it. Okay. It's S-E-T-Z-E-R, by the way. Here you 8 go. This is for you. 9 (Jackman Exhibit 3 was marked for 10 identification and was retained by counsel.) 11 BY MS. HINES: 12 Q Okay. Let's see, your opinion cites to 13 Page 176, Line 23. 14 MR. BELL: What page of the report are you 15 on? 16 THE WITNESS: Seven. 17 MS. HINES: Page 7. 18 THE WITNESS: Okay. I see it. 19 BY MS. HINES: 20 Q Okay. It goes from 123. Okay. Now, on -- 21 if you back it up on that page, back to Line 12 -- 22 A Yes. 23 Q Where the question is, "Can the data 24 warehouse be searched by date?" 25 In other words, would you tell how many MPAs</p>	<p style="text-align: right;">Page 57</p> <p>1 MPA in existence at any given time limited to 2 aftermarket MPAs sold by Sears, right? 3 A That's correct. 4 Q And you believe that they have -- they're 5 able to do that on their systems? 6 A Yes, I do. And would it be possible to back 7 to one thing on the last question? 8 Q Sure. 9 A Would that be okay because there was -- we 10 were kind of talking about two things; one, the 11 availability of data going back 20 years; and then the 12 other, you know, determining the information about 13 MPAs at a certain period of time. 14 So I didn't know which if that -- there was 15 still a pending question about the, at least, 20 16 years. But I do see that the testimony says that he 17 would say at least 20 years the information in the 18 data warehouse goes back. 19 So I just wanted to make sure I was 20 answering that line of questioning as well. So, I'm 21 sorry, would you mind repeating -- we were talking 22 about the limiting it to aftermarket. 23 Q Yes. So I'm just trying to go through to 24 make sure I understand your opinion, not -- you state 25 that the data set can be queried for each MPA in</p>

15 (Pages 54 to 57)

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1 existence at any given time limited to aftermarket
2 MPAs sold by Sears?
3 A Yes.
4 Q And your understanding is that Sears can do
5 that with their data set inquiries?
6 A Yes.
7 Q And then you also state that -- in the same
8 paragraph -- that within the aftermarket MPA data set
9 of MPAs sold during the relevant time period, other
10 data is likely available such as customer address,
11 customer number, MPA certificate number, MPA start and
12 end date, products covered by given MPA which includes
13 the type and the brand, correct?
14 A That is correct.
15 Q And is this all data that is necessary to
16 your -- to calculate the damages under your
17 methodology?
18 A I would say it depends. To the extent that
19 there could be missing data or incomplete data or data
20 that is perhaps difficult to interpret, there are
21 often other ways of either supplementing that data or
22 using a data or just using the data that you do have
23 with reasonable assumptions.
24 So I wouldn't say that if all of this
25 data -- if this data in its entirety didn't exist,

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1 methodology.
2 But at a high level, these are the data
3 fields that could allow me to implement my methodology
4 as I have described it.
5 Q Have you in your prior experience come
6 across, in doing a damages methodology, data is not
7 what you thought as you just stated?
8 A Yes.
9 Q Can you give an example?
10 A Sure. An example could be product
11 description which is often very important and as I
12 have described in my report, it would be important
13 here to know the type of product.
14 I have seen large data sets where the
15 product description is a -- you know, it's often
16 user-populated meaning the person enters free form
17 into the database.
18 So you'll have hundreds of different
19 iterations of what is perhaps the same product. And
20 so it makes it difficult or very time-consuming to
21 work through that one by one to clean the codes just
22 to make sure you have a harmonized list of the product
23 descriptions.
24 But it's possible that there was also an
25 item number that has a lookup somewhere in the

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1 that methodology would not be usable.
2 Q Okay. In its entirety. Is there other data
3 that you need to identify each class member?
4 A To identify class members or to measure
5 damages?
6 Q Well, damages is based on the individual
7 consumer who purchased an MPA?
8 A Correct.
9 Q And you have listed customer address,
10 contact information.
11 Is there any other information you would
12 need for your damages methodology?
13 A So the damages, okay. I would say it's
14 possible because sometimes you see data -- you know,
15 you got data described to you or, you know, you get a
16 list of the fields that are available and something
17 you think you understand it's one thing but then, you
18 know, it just turns out to be a code, a five-digit
19 code that makes no sense and then there is a lookup
20 table that tells you what that code means.
21 So I would leave the possibility for some
22 wiggle room that if there is some misunderstanding of
23 any of this data that it's possible that some
24 additional data to understand the data that I have
25 described could be useful in performing this damages

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1 defendant's record where it gives a unique harmonized
2 list of the product types.
3 So you think you're getting a description of
4 a product that you're going to be able to use, but
5 oftentimes it's got gibberish. Sometimes it just has
6 unrecognizable characters because a lot of times until
7 you see the data, you're not sure what you're going to
8 get; and you have to supplement it with additional
9 information.
10 Q Thank you. Okay. I'm going to ask you
11 about the eligible brands list.
12 A Okay.
13 Q Now, your opinion assumes that the eligible
14 brands list will identify the start or ending of when
15 a product was eligible for coverage. And that's in
16 Paragraph 19.
17 A Right. Just -- I just want to make sure I'm
18 clear in terms of assuming it. I wouldn't say it's
19 something I assume. It's something I researched, and
20 I have cited support that I believe demonstrates this,
21 this is the case, that the eligible brand lists do
22 maintain information on the product and type that were
23 eligible at a given point in time using a revision
24 date as an example of how you might determine the
25 date.

16 (Pages 58 to 61)

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<p style="text-align: right;">Page 62</p> <p>1 Q In that same paragraph, you state that this</p> <p>2 is based on Sears having saved somewhere eligible</p> <p>3 brands lists that -- citing to Mr. Setzer.</p> <p>4 A That's correct.</p> <p>5 Q And is it your understanding that the --</p> <p>6 each list has a revision date on it?</p> <p>7 A As far as I can tell, yes. Whether -- I'm</p> <p>8 sorry, I didn't mean to cut --</p> <p>9 Q That's okay.</p> <p>10 A Whether it's -- you know, there is a</p> <p>11 question of whether or not it's printed on the</p> <p>12 document, itself, because I believe with -- in</p> <p>13 Mr. Setzer's deposition, he was looking at it, thought</p> <p>14 there ought to be a revision date on it; but he was</p> <p>15 saying that perhaps it just didn't print out on the</p> <p>16 page that he was looking at.</p> <p>17 So it could be possible that the date is</p> <p>18 available. But, you know, unless you select a way to</p> <p>19 make it maybe show up in a footer or on a print page</p> <p>20 or something like that, you might not see it by just</p> <p>21 hitting "print."</p> <p>22 Q The exhibit he had looked at in his</p> <p>23 deposition actually didn't have it on it?</p> <p>24 A Correct. And I believe he testified that he</p> <p>25 felt there was a way to determine the revision date on</p>	<p style="text-align: right;">Page 64</p> <p>1 Q He did not state that the revision date</p> <p>2 indicates effective dates of the brands list.</p> <p>3 For example, he didn't state that it says,</p> <p>4 It's effective from March 31, 2004 through March 31st,</p> <p>5 2005, right?</p> <p>6 A No. Basically, if you have a revision date,</p> <p>7 the idea would be that you would carry that through</p> <p>8 until the next revision date, so it didn't -- when</p> <p>9 they revised it, I don't know that they would know</p> <p>10 when the end date would actually occur.</p> <p>11 But he did not testify that, you know, you</p> <p>12 could -- there is information that would tell you the</p> <p>13 start and end date on a given eligible brands list.</p> <p>14 It's possible that could be determined through</p> <p>15 additional discovery or through other means.</p> <p>16 Q Okay. So with an eligible brands list, if</p> <p>17 you had one starting back to before January 1st -- or</p> <p>18 March 25th, 2000 to the present that only had revision</p> <p>19 dates, your methodology is that you would put them in</p> <p>20 chronological order based on the revision date.</p> <p>21 So, for example, you had one prior to</p> <p>22 March 25th, 2002. And the next one is dated March</p> <p>23 31st, 2004 --</p> <p>24 A Right.</p> <p>25 Q -- and then the next one is dated</p>
<p style="text-align: right;">Page 63</p> <p>1 that document.</p> <p>2 Q But he could actually only confirm revision</p> <p>3 dates going back to when he was in charge of putting</p> <p>4 those dates on the eligible brands list?</p> <p>5 A Correct.</p> <p>6 Q And that was -- at least 2010 is I believe</p> <p>7 what he said?</p> <p>8 A Yes, that's what he testified to.</p> <p>9 Q But you do not know for certain whether</p> <p>10 there are eligible brands lists dating back to 2000</p> <p>11 with or without a revision date?</p> <p>12 A You know, it comes down to, you know, the --</p> <p>13 know it for certain, I would say, no. There were a</p> <p>14 number of eligible brands lists that were produced as</p> <p>15 part of this litigation that did not have dates on</p> <p>16 them, so I couldn't confirm it with those.</p> <p>17 We did find one that had a revision date of</p> <p>18 2004. And so that was one indication that that</p> <p>19 revision date was maintained going back earlier than</p> <p>20 when Mr. Setzer began taking on the task of updating</p> <p>21 the eligible brands list himself.</p> <p>22 And so -- yeah, that was one piece of</p> <p>23 evidence that gave us that indication. He also</p> <p>24 just -- he did say that the eligible brands list was</p> <p>25 in use going back to at least 1996 when he started.</p>	<p style="text-align: right;">Page 65</p> <p>1 January 1st, 2010.</p> <p>2 A Okay. Yeah, so --</p> <p>3 MR. BELLI: I'm going to object to form</p> <p>4 there. I don't know a question ever got asked. It</p> <p>5 was just -- I guess I lost you.</p> <p>6 MS. HINES: Okay.</p> <p>7 BY MS. HINES:</p> <p>8 Q I'm trying to figure out how you would use</p> <p>9 the eligible brands list if they existed dating back</p> <p>10 to the beginning of the breach of contract period</p> <p>11 until present where they had -- each one had a</p> <p>12 revision date on it.</p> <p>13 A Okay, correct.</p> <p>14 Q And tell me how you would use those revision</p> <p>15 dates to figure out -- or to -- for your start and end</p> <p>16 date of the eligible brand.</p> <p>17 A Okay. So assuming that eligible brands</p> <p>18 lists with revision dates were produced at some point</p> <p>19 in this litigation, yes, what I would do to start</p> <p>20 would be to line them up chronologically by the</p> <p>21 revision date and so the end date of one eligible</p> <p>22 brands list would be the day before a new revision</p> <p>23 date.</p> <p>24 Through that, we would -- I would attempt to</p> <p>25 understand what you pointed out could be revision</p>

17 (Pages 62 to 65)

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Page 66	<p>1 date, and their effective date be different. And if</p> <p>2 that were the case, seek to determine that information</p> <p>3 on the effective date if that turns out not to be the</p> <p>4 case. The only date that was discussed in the</p> <p>5 testimony in the record that I saw was the revision</p> <p>6 date.</p> <p>7 I would also seek to understand if this was</p> <p>8 the complete set of eligible brands lists like so if</p> <p>9 there wasn't one missing. Because if there was, I'd</p> <p>10 would want to try and know about that; so, if need be,</p> <p>11 I'd be aware of it. And if I had to make some</p> <p>12 assumptions to account for that, I would do so.</p> <p>13 But, generally speaking, that's how I</p> <p>14 would -- I would line them up chronically and just</p> <p>15 take the revision of the next one and the day before</p> <p>16 the end date of the previous one without any</p> <p>17 additional information.</p> <p>18 Q And is there any other data you could look</p> <p>19 to as a back check, for example, when you gave that</p> <p>20 example where you said people wrote free form but --</p> <p>21 so there were a hundred different ways of saying the</p> <p>22 same thing. But then there was a code that verified</p> <p>23 that this was actually the product that everyone was</p> <p>24 describing.</p> <p>25 Is there something with the eligible brands</p>	Page 68	<p>1 Excel but kept the same format. So it does appear</p> <p>2 that it did keep the same -- or close to the same</p> <p>3 format over that time.</p> <p>4 Q Okay. Okay. And on Page 7 of your opinion,</p> <p>5 moving on a little bit, you mention MMI that Sears</p> <p>6 maintains which is incorporated into the Ciboodle</p> <p>7 infrastructure that contains information on brands and</p> <p>8 products that are covered under its MPAs, correct?</p> <p>9 A Correct.</p> <p>10 Q And this system was implemented on</p> <p>11 March 15th, 2009?</p> <p>12 A Correct.</p> <p>13 Q And when this was implemented, your</p> <p>14 understanding is that it was a required field when an</p> <p>15 MPA was sold?</p> <p>16 A That's my understanding that within Ciboodle</p> <p>17 when a Sears associate was helping a customer, there</p> <p>18 would be a drop-down menu for the product brand which</p> <p>19 ostensibly was to kind of force the issue of selecting</p> <p>20 a brand for -- you know, for inclusion in the ultimate</p> <p>21 MPA database for -- that was being covered by an MPA.</p> <p>22 Q And the MMI list of brands was the current</p> <p>23 list of eligible brands at the time of the sale?</p> <p>24 A That was available in Ciboodle.</p> <p>25 Q Is that how you pronounce it?</p>
Page 67	<p>1 list that would have the same type of verification?</p> <p>2 A I think I understand your question. And if</p> <p>3 I'm not answering it, please correct me.</p> <p>4 But the eligible brands lists that I saw</p> <p>5 were pretty clear from the prospective of identifying</p> <p>6 the type of product and the brand. And, you know,</p> <p>7 these were documents that were used by Sears</p> <p>8 representatives when they had to go and verify if a</p> <p>9 customer called and said, Hey, I have a Maytag</p> <p>10 dishwasher; I'd like to have it covered, the list</p> <p>11 needed to be clear enough for them to look it up and</p> <p>12 say, Under dishwashers, is Maytag a covered brand,</p> <p>13 okay, we can do this.</p> <p>14 So I believe that if it was clear enough for</p> <p>15 the Sears representatives to use the eligible brands</p> <p>16 list to verify based on product brand and type that it</p> <p>17 would be simple enough for me to do that as well.</p> <p>18 I'm not aware of anything else that might be</p> <p>19 necessary to interpret the eligible brands list. But,</p> <p>20 again, the ones that I saw were pretty clear. And</p> <p>21 they seemed to hold the same format.</p> <p>22 In fact, when Mr. Setzer took over the task</p> <p>23 of updating it in 2010, he testified that he simply</p> <p>24 took the most recent PDF version of the eligible</p> <p>25 brands list and just, you know, moved it over into</p>	Page 69	<p>1 A I don't know, maybe it's Ciboodle. Yes, as</p> <p>2 I understand it, and that's -- and Mr. Setzer actually</p> <p>3 made the point that they didn't want printout versions</p> <p>4 flying around so there would be version issues.</p> <p>5 So when the new version was created, they</p> <p>6 would just load that in. And then a sales associate</p> <p>7 would just know they could click on that, and it would</p> <p>8 be the updated list.</p> <p>9 Q So your opinion does not assume that Sears</p> <p>10 could run a query for whether an item was on the</p> <p>11 eligible brands list at the time of sale?</p> <p>12 A Are you talking about through eligible</p> <p>13 brands lists or through MMI?</p> <p>14 Q Let's -- eligible brands lists.</p> <p>15 A Okay. I don't know if they'd have the</p> <p>16 ability to run a query because I know prior to</p> <p>17 Mr. Setzer taking over the task of updating the</p> <p>18 eligible brands lists, there was PDF forms of those</p> <p>19 documents that were sent around.</p> <p>20 So I -- but he said that he thought that</p> <p>21 somewhere there would be Word versions of those PDFs</p> <p>22 saved somewhere. But whether or not that was also in</p> <p>23 some database that could be queried, I'm not sure.</p> <p>24 But as I discussed in my report, I could</p> <p>25 still take those separate files and then create the</p>

18 (Pages 66 to 69)

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<p>1 database that I would need to query the information 2 for my report -- or from my methodology. 3 Q Okay. And what about the same query after 4 MMI was implemented? 5 A As I sit here today, I don't recall whether 6 they said it was something they could query. It was 7 information that was stored in a database. Whether or 8 not -- I don't believe anyone testified as to whether 9 or not it was queriable. 10 But I do know that at the same time, the 11 eligible brands list was separately still being 12 maintained so Sears representatives, if they wanted 13 to, they could actually verify the information from 14 MMI through the PA Resource Center using the eligible 15 brands list. 16 And so -- and those were the ones -- you 17 know, that was during Mr. Setzer's -- or for much of 18 his time period of updating those lists. So I believe 19 that information would be saved somewhere. So if it 20 were the case that for some reason the revision date 21 weren't available in MMI, the eligible brands list 22 could still be used during that time. 23 Q So your opinion assumes that the eligible 24 brands list is used by Sears to determine if a product 25 was eligible for coverage under an MPA at the time of</p>	<p>1 operative form agreement, that layout lays out the 2 terms of coverage as I understand it that would inform 3 what the meaning of "coverage" was. 4 Q Do you understand that the amount paid for 5 an MPA is -- by the consumer is for coverage on the 6 items listed on the MPA certificate? 7 A I understand that to be the case, yes. 8 Q Forgive me if I already asked you this. 9 Does your opinion account for MPAs for 10 products on the eligible brands list at the time of 11 sale which are not on the time of renewal? 12 A Can you clarify what you mean by "which are 13 not on the time of renewal." 14 Q If a brand is on the eligible brands list at 15 the time that the consumer purchases the MPA; and 16 before they renew, it's taken off the eligible brands 17 list, how are those MPAs accounted for? 18 A The renewals or the original MPA? 19 Q The original MPA. 20 A The original MPA would -- it would count as 21 a product that was eligible for coverage at the time 22 of purchase. So that would cover the entirety of the 23 OAM contract, period. 24 Are you also asking me about the renewal? 25 Q Yes.</p>
Page 71	Page 73
<p>1 purchase? And I'm looking at Paragraph 19. 2 A And, I'm sorry, would you mind repeating 3 that. 4 Q Sure. Your opinion assumes that the 5 eligible brands list is used by Sears to determine if 6 a product was eligible for coverage under an MPA at 7 the time of purchase? 8 A Again, I would just take issue the word 9 "assumes." I believe there is testimony to support 10 that notion that I cited in my report, but, otherwise, 11 yes. 12 Q Okay. Your opinion does not state what 13 "coverage" means or "covered" means; is that correct? 14 A My -- in terms of what exactly? I just want 15 to make sure I understand. 16 Q Well, if a given product was eligible for 17 coverage, what is "coverage"? 18 A "Coverage," as I understand it, would just 19 be coverage under the form MPA agreement that would be 20 entered into by a customer with Sears Protection 21 Company as of the time of the purchase. 22 I know they had form agreements that weren't 23 separately negotiated from customer to customer. But 24 that template did update from time to time during the 25 relevant time period. So whichever would be the</p>	<p>1 A Okay. With respect to the renewal, it would 2 be treated almost as a separate transaction and new 3 price for the MPA. And so the methodology 4 contemplates looking at the eligible brands list at 5 the time of renewal to see if the product was eligible 6 for coverage. 7 Q Do you consider at all in your methodology 8 whether an MPA is on the eligible brands list at the 9 time a consumer calls for service? 10 A Do I consider it for what purpose? 11 Q Whether that MPA would fall under -- within 12 the data set or outside the data set? 13 A Maybe I can answer it a different way. 14 But the only thing I would consider for 15 whether or not it, if you will, stays on the databases 16 as a potentially impacted product is whether or not it 17 was eligible for coverage at the time they purchased 18 it. It doesn't contemplate looking at, you know, any 19 of the service calls that were made or anything like 20 that. 21 Q What about, conversely, an MPA that sold on 22 a product that's not on the eligible brands list at 23 the time of sale but prior to the termination of the 24 MPA agreement, it is on the eligible brands list? 25 A My methodology considers that to be a</p>

19 (Pages 70 to 73)

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<p style="text-align: right;">Page 74</p> <p>1 product that would stay, you know, in the analysis 2 database, if you will. That would be something that 3 would be a quote, unquote, affected product for the 4 alleged misconduct. 5 Q So it's in the database, or it's out of the 6 database? 7 A It would be in the database. 8 Q Okay, in the database. And there's no 9 calculation for prorated damages because it was -- it 10 became eligible a year after the MPA was entered into? 11 A Not at this time. I mean, that would be an 12 issue. I would probably have to study more to see, 13 you know -- one of the central, if not the central 14 allegation made by the plaintiffs here is that 15 plaintiffs were entering into MPA contracts with Sears 16 that Sears did not cover or intend to cover. 17 So whether or not it was added to the 18 eligible brands list at a certain time during that 19 period, I'd have to study as to whether or not that 20 comports with plaintiff's allegations. 21 But right now, my damages analysis is 22 consistent with the way the class has been defined. 23 So -- 24 (Discussion off the record.) 25 BY MS. HINES:</p>	<p style="text-align: right;">Page 76</p> <p>1 product -- 2 A Okay. 3 Q -- do you know if that would be maintained 4 in the database? 5 A If the technician would then update the 6 record to reflect the correct product brand, is 7 that -- 8 Q That's a possibility. Do you know if that 9 is in the database if a technician -- 10 A I'm not sure if technicians ever took on 11 that responsibility or not. I know that Sears kept 12 records of the service calls and reasons for 13 non-repair or anything like that. So it could be 14 possible that that is one of the reasons -- and that 15 might get reflected. 16 As I understand it, the data warehouse is a 17 pretty old technology. And when a correction would 18 need to be made to any record, what they would do 19 would be to delete that record and then add a new 20 record in. 21 So if that were the case, then at the time 22 that the query could be pulled to produce these data, 23 that update could be reflected in the data as of the 24 time that the data were produced. But if it wasn't 25 for any reason, then all I would have to go on is what</p>
<p style="text-align: right;">Page 75</p> <p>1 Q Does your methodology take into account a 2 product on the eligible brands list at the time of 3 sale that was incorrectly given coverage because the 4 consumer had given the wrong name of the product? 5 A Could you repeat that. I just want to make 6 sure I got it before I answer. 7 Q Okay. The consumer gives a product name 8 when they're signing up for an MPA and that product is 9 on the eligible brands list. However, the product in 10 the consumer's home that is covered under the MPA is 11 actually not one that's on the eligible brands list. 12 A Okay. Does it -- no. So if the consumer 13 gave information that was maybe incorrect, you know, 14 they incorrectly identified the brand, that would be 15 the information that would presumably then be stored 16 in the data warehouse and would be made part of the 17 MPA database. And that would be matched against the 18 eligible brands list. 19 So, no -- because, as I understand it, Sears 20 for aftermarket products didn't inspect the products 21 before they agreed to the MPA. So I don't believe 22 there would be other information available to do a 23 verification of the brand. So I would only have to go 24 on what would be in the database. 25 Q What if a service call is made on the</p>	<p style="text-align: right;">Page 77</p> <p>1 was in the data warehouse. 2 Q And when you were just talking about an 3 update, is it your understanding that the update would 4 override the prior technician comment? 5 A That's my understanding that, you know, that 6 they couldn't just sort of update within the fields 7 that -- that they'd have to actually delete a record 8 and then re-enter it with new information. That's how 9 I understand it. 10 Q What about information from the call center 11 representative when the consumer calls the call center 12 that I need a repair on this item? 13 A And could I just go back to -- 14 Q Sure. Sure. 15 A And it dovetails into this question. But, 16 again, even if they didn't have to delete the whole 17 record, if they could just simply update the brand if 18 it turned out that it was incorrectly provided by the 19 consumer and the service technician, for instance, was 20 able to relate that back to whomever it is at Sears 21 that handled that. 22 The -- my presumption would be that if the 23 query were run at a later point in this litigation, 24 that would reflect the corrected information. So, 25</p>

20 (Pages 74 to 77)

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<p style="text-align: right;">Page 78</p> <p>1 again, as part of my analysis, I would have the 2 correct information.</p> <p>3 If for one reason or another, if it's the 4 call center, service technician, did not determine 5 that the brand information was incorrect or otherwise 6 didn't relay that back, then all I would have to go on 7 is what was in Sears's records.</p> <p>8 Q Okay. So when you were talking about 9 updating, you were actually talking about the brand 10 information or the type of product.</p> <p>11 You weren't talking about -- opposed to what 12 the technician's comments are?</p> <p>13 A Well, I was under the impression that the 14 line of questioning had to do with perhaps incorrect 15 brand information. So that's what I was referring to 16 that, whether it was you delete the record and add a 17 new one -- or maybe they did have the capability of 18 just going in and change one field in the case of the 19 brand, changing it from Maytag to Kenmore, for 20 instance.</p> <p>21 Either way, if the queries were to be run at 22 some point later in this litigation, my presumption 23 would be that it would reflect the most correct and 24 up-to-date information.</p> <p>25 Q So the MPA that was sold with the incorrect</p>	<p style="text-align: right;">Page 80</p> <p>1 we would do -- and this is something we have done in 2 just about every damages analysis that involves big 3 data that I can remember doing. But a big part of 4 that is name harmonization whether it be customer 5 names or, in this case, product names, brand names.</p> <p>6 So one thing we would do before we actually 7 perform the analysis of matching between the eligible 8 brands list and the MPA databases would be to go 9 through those brand names and make sure that every 10 version of Kenmore, for example, was spelled 11 consistently and correctly.</p> <p>12 So then it would depend on whether or not -- 13 again, you asked is it the database or not. It would 14 depend on the matching procedure.</p> <p>15 Q Okay. Are these the reasonable assumptions 16 that you would use that you stated in your report? 17 This I believe is in Footnote 51.</p> <p>18 A I wouldn't call it -- I wouldn't say that 19 that procedure would fall under the reasonable 20 assumptions because that happens in, again, every 21 large data analysis project that we have ever had.</p> <p>22 There is usually some sort of name 23 harmonization procedure that happens early when you 24 get raw data because typically raw data is quite 25 messy, again, to use a nontechnical term.</p>
<p style="text-align: right;">Page 79</p> <p>1 brand but with a brand that was on the eligible brands 2 list, that would not be in the data set?</p> <p>3 A It would depend on whether or not Sears 4 managed to obtain the correct brand information. You 5 know, like I said, they didn't verify independently 6 for each aftermarket MPA that was sold.</p> <p>7 But you gave some examples of maybe calling 8 from a call center and asked about their Maytag 9 dishwasher. And it says here we have a Kenmore 10 dishwasher and correcting the data that way. Or maybe 11 it was a technician who was called and came to find 12 out it was the wrong brand information.</p> <p>13 If it got updated through situations like 14 that, yes. If not and it wasn't otherwise determined 15 or verified, then I would just have to go with what 16 was in the data.</p> <p>17 Q Okay. What about human error where we have 18 a misspelling that you mentioned earlier where people 19 can have a hundred different ways to say the same 20 thing or Dainon Setzer testified about having 21 "Kemmore" instead of Kenmore.</p> <p>22 A Yes.</p> <p>23 Q How -- are those -- those MPAs in the data 24 set or outside the data set?</p> <p>25 A Well, it depends. I mean, one of the things</p>	<p style="text-align: right;">Page 81</p> <p>1 But -- so that would just be the standard in 2 my opinion. It wouldn't fall under these other 3 reasonable assumptions.</p> <p>4 Q What about if there is no brand name?</p> <p>5 A If there is no brand name, then there are 6 other reasonable assumptions that can be used to 7 incorporate those data into my analysis.</p> <p>8 Q Can you let me know what some of those 9 reasonable assumptions are?</p> <p>10 A I can give some hypothetical examples. 11 Ultimately, that decision of how -- if and how you can 12 apply reasonable assumptions is driven by the data 13 that you do have and what those data show.</p> <p>14 So, you know, in terms of being specific now 15 without having seen the data, I don't think that, you 16 know, it's -- I think it's preliminary to be specific 17 about that.</p> <p>18 But I can give as an example, say, you know, 19 let's take 2004, for instance. We have a large amount 20 of data on the MPAs that are part the analysis for 21 2004. And then we have a smaller subset for which 22 there is missing brand information.</p> <p>23 So one thing I could do to reasonably 24 estimate those damages would be to look at the data 25 for 2004 for which we had complete information and</p>

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<p style="text-align: right;">Page 82</p> <p>1 calculate the percentage of those MPAs that fell into</p> <p>2 this category of being affected by the alleged</p> <p>3 misconduct.</p> <p>4 And then I could apply that percentage to</p> <p>5 the data that we're missing brand information. But,</p> <p>6 again, you want to understand the data as well as you</p> <p>7 can to determine the right approach.</p> <p>8 So, for instance, if it turned out after we</p> <p>9 analyzed the data with missing brands that for some</p> <p>10 reason 85 percent of them were for refrigerators which</p> <p>11 is probably on the higher end of appliances that are</p> <p>12 being covered by MPAs. I don't know that for sure.</p> <p>13 But just in this hypothetical, say they are.</p> <p>14 If 85 percent of the missing data -- the</p> <p>15 data with missing brands were for refrigerators, then</p> <p>16 what I might do is modify the comparison data for</p> <p>17 which we have the brand information to be more</p> <p>18 weighted towards refrigerators to better reflect the</p> <p>19 data with the missing brand information.</p> <p>20 So there is so many different ways that you</p> <p>21 could approach this to determine the most reasonable</p> <p>22 approach. But one of those would allow me to</p> <p>23 reasonably estimate class-wide damages with the</p> <p>24 inclusion of those data.</p> <p>25 Q And have you done that in your previous</p>	<p style="text-align: right;">Page 84</p> <p>1 informed by the data you do have.</p> <p>2 MS. HINES: Can we take that short break?</p> <p>3 MR. BELLI: Sure.</p> <p>4 MS. HINES: I'm asking for the break.</p> <p>5 MR. BELLI: No problem.</p> <p>6 (A brief break was taken.)</p> <p>7 BY MS. HINES:</p> <p>8 Q I'm going to ask you now about the refunds</p> <p>9 and replacement authorizations or replacement credits</p> <p>10 I think you call them.</p> <p>11 A Replacement authorization credits. I think</p> <p>12 they have other -- there's other nomenclature for</p> <p>13 them.</p> <p>14 Q Okay. So your opinion states that you can</p> <p>15 calculate the price paid for each product covered by</p> <p>16 an MPA?</p> <p>17 A Yes.</p> <p>18 Q And this is based upon Mr. Setzer testifying</p> <p>19 that the data warehouse or MPS can tell you how much</p> <p>20 Sears charged for a particular MPA, correct?</p> <p>21 A That's part of it, yes. And, I'm sorry, you</p> <p>22 said, where I could calculate the price. I believe</p> <p>23 the -- just the price, itself, would be available. I</p> <p>24 don't know if that's semantics, but I wouldn't</p> <p>25 necessarily have to calculate it.</p>
<p style="text-align: right;">Page 83</p> <p>1 consulting experience where you had missing data, and</p> <p>2 you had to look at historical data and percentages?</p> <p>3 A Yes.</p> <p>4 Q Did that come up in the Hankinson case?</p> <p>5 A No, I didn't have any missing data.</p> <p>6 Q Can you recall a case where it came up in?</p> <p>7 A Gosh, off the top of my head, no. But I</p> <p>8 would say that in almost every case there is usually</p> <p>9 some component of data that, you know, is either</p> <p>10 incomplete in -- you know, is unintelligible and/or,</p> <p>11 you know, sometimes when you have multiple defendants,</p> <p>12 you have data -- and you're trying to say, for</p> <p>13 instance, come up with a net price, you don't have the</p> <p>14 same categories of, you know, discounts or credits or</p> <p>15 rebates.</p> <p>16 You know, so -- and you want to make that</p> <p>17 comparison apples-to-apples, so you make certain</p> <p>18 assumptions there if some data is missing in one of</p> <p>19 the defendants that the other three, for instance,</p> <p>20 have, you make assumptions to try to even out and make</p> <p>21 the comparison as apples-to-apples as possible.</p> <p>22 The idea being is you want to make the</p> <p>23 assumptions that allow you to most accurately</p> <p>24 represent and analyze the data for which information</p> <p>25 is missing as possible. And that, again, is usually</p>	<p style="text-align: right;">Page 85</p> <p>1 There was an alternative discussion about,</p> <p>2 Well, if for some reason those prices aren't</p> <p>3 available, then there's -- you know, their pricing</p> <p>4 formula could be used, but -- I just want to make sure</p> <p>5 I was clear on that.</p> <p>6 Q Okay. So your opinion is the actual price</p> <p>7 is available?</p> <p>8 A Yes.</p> <p>9 Q Okay. And when you say that, do you mean</p> <p>10 the price, the sales floor price that Sears would have</p> <p>11 or the price for the aftermarket product for the MPA?</p> <p>12 A The aftermarket.</p> <p>13 Q Aftermarket, okay.</p> <p>14 A Yes.</p> <p>15 Q Okay. And you're talking about if an MPA is</p> <p>16 sold where there is more than one product on that MPA,</p> <p>17 you -- your understanding that Sears has data for the</p> <p>18 price of each individual item?</p> <p>19 A Yes, that's my understanding.</p> <p>20 Q Now, you read Mr. Setzer's deposition. So</p> <p>21 you recall that he talked about the factors that they</p> <p>22 consider in pricing MPAs.</p> <p>23 Do you remember that?</p> <p>24 A Yes, yes.</p> <p>25 Q And he stated that it would include the</p>

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<p style="text-align: right;">Page 86</p> <p>1 purchase price and competitor's price in the market 2 and that this would go into their point of sale 3 pricing, do you recall that? 4 A Point of sale for -- 5 Q For products, not aftermarket. 6 A Not aftermarket. So then would you mind 7 restating the question. 8 Q Okay, okay. So aftermarket pricing differs 9 from point-of-sale pricing because -- in Sears's 10 formula because the products are not on the 11 merchandise floor; is that correct? 12 A Right. They don't have information on the 13 MSRP just by virtue of having sold it through Sears 14 and in their database. 15 So if there is an extra step or two to 16 determine a, if you will, like a market price or an 17 MSRP as a starting point. And, as I understand it, 18 they look for comparable products sold at Sears as a 19 starting point for that value. 20 Q And then these prices -- it's your 21 understanding that these prices are stored and saved 22 somewhere? 23 A Yes. 24 Q Okay. And you're actually talking about the 25 aftermarket price?</p>	<p style="text-align: right;">Page 88</p> <p>1 automated process. 2 But, you know, again, coming back to what 3 Mr. Setzer says that using this approach that it's -- 4 the information on these prices for all the different 5 types of products they could cover is saved somewhere. 6 So I'm going off of that. 7 How it would specifically queried or 8 implemented or involved some sort of calculation on my 9 part, that I'm not entirely sure of. 10 Q If it did not exist and Dainon Setzer is not 11 correct on what he said and there's -- you have to get 12 the pricing through an alternative method -- 13 A Okay. 14 Q -- how would you do that? 15 A Is this also assuming that the data on the 16 prices, themselves, don't exist, what I'm discussing 17 in Paragraph 20 and 21? 18 Q Well, the pricing -- the price that they 19 have for the actual product -- 20 A Okay. 21 Q -- without factoring in the age of the 22 product and the cost of repair or replacement for that 23 product. 24 A Okay. So, I mean, again, I'm -- is this 25 related to Paragraph 20 or -- so it's two sources of</p>
<p style="text-align: right;">Page 87</p> <p>1 A Yes, the price that customers actually paid. 2 Q So you're not talking about the price before 3 that plugs into a formula that Sears uses to come up 4 with the aftermarket price? 5 A No, that's not what I'm talking about in 6 Paragraph 20 of my report. I just want to make 7 sure -- but in Paragraph 21, I do discuss as a 8 potential alternative to this pricing information that 9 they have, you know, this pricing formula that they 10 apply and that Mr. Setzer said that prices for every 11 single type of product that could be covered was 12 stored and saved by Sears so as an alternative could 13 potentially go that route to determine prices. 14 But in Paragraph 20, I talk about the 15 evidence that serves as the basis of my understanding 16 that the prices, themselves, are available or 17 maintained by Sears. 18 Q Okay. To the extent they aren't maintained, 19 the alternative methodology that you -- or data that 20 you propose could provide you with pricing information 21 is where you would use Sears's formula to calculate 22 the prices; is that correct? 23 A There need to be some -- you know, an 24 understanding of how that was implemented. It appears 25 to be done through their system, so it might be an</p>	<p style="text-align: right;">Page 89</p> <p>1 data that I'm talking about in the report, so I just 2 want to make sure I'm clear. 3 Q Okay. Tell me the two sources so we're both 4 clear. 5 A Okay. So in Paragraph 20, I'm talking about 6 deposition testimony from Dainon Setzer where he says 7 that the price for an MPA charged by Sears is 8 available through, I'm pretty sure, the data 9 warehouse, yes. It's in my report. And that, of 10 course, you can -- you can determine -- I'm sorry, I 11 was trying to read while I was also trying to talk. 12 So, yes, information is available on the 13 prices charged for a given MPA and that -- they 14 generally price the products on a per-product basis 15 even though on the certificate agreement that they 16 receive, they only see a total price. 17 So, internally, they are pricing it on a 18 per-product basis. And we know -- not to mix 20 and 19 21, but we know they have a formula that they use to 20 determine that price. 21 When they're agreeing to an MPA with a 22 customer, they price it per-product, they sum it up, 23 and then that total price is what's sent to the 24 customer -- 25 Q -- wait, let me interrupt you. And that</p>

23 (Pages 86 to 89)

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<p style="text-align: right;">Page 90</p> <p>1 price is saved and stored somewhere, is that your 2 understanding? 3 A That's my understanding, yes, because they 4 go through the, you know, the motions of pricing it on 5 an individual -- on an individual product basis. 6 And then also customers can call and inquire 7 about the individual pricing of a product under an 8 MPA. And when they do that, a Sears representative 9 who answers the call has the ability, I believe, in 10 the PA Resource Center to look at the particular 11 product pricing. 12 So, again, that's something that informs my 13 understanding that this information is saved somewhere 14 because the Sears representatives have access to it. 15 Q And that is Dainon's testimony that you cite 16 for that? 17 A Correct. 18 Q Okay. Then in Paragraph 22 -- 19 A Twenty-one? 20 Q No, I'm sorry, 21, yeah. 21 A Okay. 22 Q It's 21. You talk about in the event that 23 the single individual pricing is not available? 24 A Yes. 25 Q Okay.</p>	<p style="text-align: right;">Page 92</p> <p>1 answer is I'm not sure because, again, I was saying 2 that they didn't go into enough detail to fully 3 understand the very technical steps that are involved 4 and what would be saved in their system, as Ms. Means 5 put it, that would be able to execute this analysis. 6 So I can't be specific at this point as to 7 what additional information would be needed. 8 Q If they had applied a discount for multiple 9 MPA products on one -- in one MPA sale, that would be 10 information that would need to be saved? 11 A Yes. 12 Q Right. As well as if there was a 13 promotional discount applied at the time? 14 A Sure, yes. 15 Q But you don't know if they have these saved 16 at this time, that information saved? 17 A Well, you know, again, it comes down to what 18 I talk about in Paragraph 20. That, as I understand 19 it, is the price they charge to the customer. 20 So in that regard -- and it's the price 21 that -- you know, if a customer is calling up and say, 22 Hey, how much did I pay for the refrigerator under my 23 MPA that the agents, using the PA Resource Center, can 24 access this information. So the presumption there 25 would be that they're discussing the net price or the</p>
<p style="text-align: right;">Page 91</p> <p>1 A So I talk about the price formula that they 2 use to come up with these per-product prices for MPAs 3 and how Mr. Setzer did testify that the prices, you 4 know, that were -- that you could determine the prices 5 for every type of product using information that's 6 stored and saved by Sears. 7 So while neither him nor Ms. Means went into 8 all the detail necessary to describe how that process 9 would work, it appeared from both their testimony that 10 it's on a system that -- that information could be 11 determined using their formula on their system. 12 Q And that would require Sears having to save 13 the age of the product at the time the MPA was entered 14 into? 15 A I believe Mr. Setzer did say that the age of 16 the product was taken into account. 17 Q And that -- would that affect the cost of 18 repair and replacement that's taken into account for 19 the aftermarket MPS? 20 A The age could. Other things could affect 21 the cost of repair, but age is probably one of them. 22 Q Okay. And for an aftermarket MPA, you would 23 need more than just the product type and brand if you 24 didn't have the individual pricing available, correct? 25 A To implement any of these formulas, the</p>	<p style="text-align: right;">Page 93</p> <p>1 price that they actually paid. 2 If that's the case, then it's not clear what 3 any rebates or discounts -- that separate information. 4 Usually, I like to have it because I like to have as 5 much information as I can. 6 But if the net price is already calculated 7 and it reflects the price that was paid by the 8 customer, that, as I understand it as part of my 9 methodology, is the price that I would be looking to 10 use. 11 Q But if we didn't have that -- the PA 12 Resource Center, what you talk about in Paragraph 19, 13 if we didn't have that per-price data, we would need 14 to have the age of the product to determine what the 15 pricing was at the time of sale -- or an 16 aftermarket -- 17 A So if you're talking about for the 18 implementation of what's in Paragraph 21, I believe 19 that to be the case. And -- yes, I believe that to be 20 the case. 21 There was some -- between Mr. Setzer and 22 Ms. Means, there was perhaps some conflicting 23 information about the age of the product. But, 24 ultimately, I couldn't say specifically what would be 25 needed until I understood the formula better.</p>

24 (Pages 90 to 93)

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1 So it's possible that the age is important.
2 I think that's what was said, but I think there was
3 some conflicting information there. So I can't be
4 certain as I sit here.
5 **Q** Okay. In Paragraph 22, you state that the
6 refund can be used to measure damages as we -- you
7 stated earlier that was -- that's part of your
8 methodology, applying the refunds.
9 **A** Yes, I would want to account for a refund up
10 in that price.
11 **Q** And is it the refund amount you're talking
12 about for the premium, the MPA premium, that was paid?
13 **A** What do you mean by "premium"?
14 **Q** So to the extent a consumer received a
15 refund for the MPA coverage.
16 **A** For a particular product?
17 **Q** For a particular product, yes.
18 **A** Okay, okay. So I understand that. Now, do
19 you mind restating the question so that I understand.
20 **Q** Yeah, okay. So when you say, "accounting
21 for the refund," you're talking about the refund
22 amount that a consumer received for an individual
23 product on their MPA certificate?
24 **A** Yes. Well -- yes, the individual products,
25 I believe, are listed on the MPA certificate. But the

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1 the specific MPA?
2 **A** Correct.
3 **Q** And your understanding is that Sears has the
4 data to be able to make that match?
5 **A** Yes, I believe so.
6 **Q** Okay. And the merchandise credit, is that
7 for the value of the merchandise?
8 **A** Yes. Yes, it's based on -- as I understand
9 it, they look for a comparable product that is sold by
10 Sears of the same -- you know, sometimes technologies
11 advance rapidly, so I believe Sears makes an effort to
12 match it to a comparable product or comparable value
13 and then bases the authorization of credit on that
14 amount.
15 **Q** And your understanding is that Sears
16 keeps -- maintains data on the merchandise credits or
17 replacement authorization credits that are fulfilled?
18 **A** Yes.
19 **Q** Do you know whether they keep data on
20 merchandise credits that are not fulfilled?
21 **A** I don't know that for certain. I know when
22 Mr. Setzer was discussing Exhibit 20(a), they were
23 asking generally about merchandise authorization
24 credits. And he stepped in to say this query was
25 specific to those that were fulfilled.

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1 price that they paid for the individual prices are
2 not.
3 But I believe -- to answer your question,
4 yes, the refund that I would be applying would be
5 specific to the product that may or may not -- that
6 would be at issue in this matter that I would be
7 analyzing against the price that was paid for the MPA
8 for that product.
9 **Q** Okay. And to the extent that the refund
10 amount is a prorated amount from what they paid for
11 that MPA, that amount is going to be damages to that?
12 **A** The difference between the price and the
13 whatever refund they received would be damages, yes.
14 **Q** Okay. And in your methodology, is the
15 refund matched to the specific product on a specific
16 MPA?
17 **A** Yes.
18 **Q** Okay. And for merchandise credits, you
19 similarly state that you would apply the credit that a
20 consumer received against the cost of the MPA that
21 they paid for the individual product?
22 **A** For the individual product, yes, the amount
23 of the credit that they received and fulfilled.
24 **Q** And fulfilled, correct. And you're going to
25 match the -- that credit to the specific product on

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1 So I don't know if that means that was done
2 deliberately. But -- so I can't say for certain. I
3 can't recall if they covered -- I would imagine they
4 would have that, but I don't have anything to cite to
5 for that.
6 **Q** Okay. I'm going to ask you about repairs.
7 And you stated earlier that whether or not an MPA
8 holder received repairs on an MPA that's in the data
9 set is not -- was not factored into your damages
10 calculation?
11 **A** If they received a repair on a product that
12 wasn't covered, is that -- I'm sorry, is that the
13 question?
14 **Q** Yes.
15 **A** Okay. That is not factored in.
16 **Q** Okay. Now, you reviewed Katrina Means's
17 testimony, correct?
18 **A** Yes.
19 **Q** And she testified that if an item is listed
20 on an MPA, it is covered.
21 Do you recall her stating that?
22 **A** No, I don't.
23 **Q** So you don't have an understanding that even
24 if it's not on the eligible brands lists but if it's
25 on your MPA certificate, Sears will still repair that

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product or replace that product?

A Right. Well, I don't recall, as I sit here today, the specific statement that she made. But I would come back to what I said earlier which is, you know, for the purposes of my damages and methodology, I assumed that the allegation was true.

So as I understand the allegation, that while there were products for which Sears entered into and an MPA with a customer, presumably when they did so that it would be covered. But then customers learned that, in fact, they were not covered.

So that is the assumption that I am making in offering my damages and methodology. So I believe the question you're asking, you know, I don't have an opinion about that assumption.

Q Is that something that you could factor into your damages calculation if the data existed?

A In what way?

Q An MPA that is in the data set so it's an MPA that was sold on the product that was not on the eligible brands list at the time of sale but for which the consumer received repairs on.

A From what I recall in the testimony that there is a way -- there is a database that maintains a service record of products that are, you know, covered

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eligible for coverage under the MPA.

Is there a difference between not covered by or eligible for coverage under the MPA?

A No. If I were -- I mean, "eligible for coverage" is the term. I don't know if I used that terminology -- that phrase consistently. But, ultimately, it comes down to the eligibility for coverage as determined by the eligible brands list or potentially MMI.

Q Is there a reason that you did not consider crediting MPAs in the data set for repairs that a consumer received on those products?

A The reason just being that, you know, I assumed the allegations were true. And as part of those allegations was that products that were not eligible for coverage but were included on under an MPA were not covered by Sears.

And so that was the assumption that guided the entirety of my analysis. So that would be the reason why I didn't consider that.

Q Okay. I didn't see that you considered annual maintenance checks into your methodology. And when I say "annual maintenance checks," I mean an annual maintenance check fulfilled.

A You mean like preventative maintenance?

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under MPAs. So if there was any information that needed to be accounted for, I presume that it would be included in that database. I'm not sure what you're specifically asking for in terms of accounting for it, so I can't say for certain that it's in that database and what I could do with it.

But I know that they did keep records of those service calls. So there would be some information that I would be able to use for whatever accounting for purposes you're referring to.

Q Because that MPA would be in the data set because it was an MPA sold on an eligible brand?

A Well, yes, or if there was some reason that I needed to consider those, I could alter the database quite easily to keep those in the database. So one way or another, I could analyze them.

I could keep them in the database. And then whatever information that Sears has related to the service calls or the services that were done, that would need to be considered. I could incorporate that.

Q In Paragraph 26, you state that your methodology would identify products in the master breach of contract MPA data set which includes aftermarket MPAs sold by Sears yet not covered or

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Q Yeah, understand the agreement the consumer can call up once a year and have them come out.

A Right.

Q Did you consider that in your data set as to whether that would affect the -- you know, the credit, you know, against what they paid for the MPA?

A Are you talking about the intrinsic value of having a preventative maintenance check, or -- in what way are you asking if I considered it?

Q If they called for a preventive maintenance check, if it was fulfilled.

A If it was fulfilled. Again, no, I didn't because I was going off of the assumption that the allegations were true and did not include any service calls because -- service calls or maintenance checks because the allegation being that if it was an ineligible product that it wasn't covered by Sears.

Q Do you know if Sears maintains data and annual maintenance checks that were fulfilled?

A No, I don't. That was outside the scope of my analysis.

Q Okay. What about buyouts? I did not see that you considered buyouts in your damages methodology.

Do you recall what buyouts are?

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<p style="text-align: right;">Page 102</p> <p>1 A Not the terminology that you're using. I</p> <p>2 mean, are you saying that differs from a refund of</p> <p>3 the --</p> <p>4 Q A buyout is when -- and this is when Dainon</p> <p>5 Setzer testified. When Sears does not have the</p> <p>6 ability to repair a product under an MPA and it offers</p> <p>7 a cash settlement in lieu of repairing.</p> <p>8 A As I understood that to me, that was akin to</p> <p>9 a refund.</p> <p>10 Q So you equated that with a refund?</p> <p>11 A Yes.</p> <p>12 Q Okay. And it would be a refund that was</p> <p>13 fulfilled, accepted by the consumer?</p> <p>14 A Yes.</p> <p>15 Q Do you know if Sears keeps data on buyouts</p> <p>16 specifically? I'm using that term.</p> <p>17 A My -- again, my understanding is that it</p> <p>18 would be part of the information that was included</p> <p>19 with the refunds data.</p> <p>20 I don't know if you're representing to me</p> <p>21 that buyouts and refunds are different. But, as I</p> <p>22 understand it, they were one and the same.</p> <p>23 Q Is there a difference between a refund and a</p> <p>24 full refund?</p> <p>25 A Well, I believe in certain instances -- and</p>	<p style="text-align: right;">Page 104</p> <p>1 Pennsylvania residents, and it would be limited to the</p> <p>2 relevant time period that you have stated --</p> <p>3 A Right.</p> <p>4 Q -- as to whether an MPA was purchased with a</p> <p>5 product that was on the eligible brands list at the</p> <p>6 time of purchase --</p> <p>7 A Right.</p> <p>8 Q -- was there any consideration for whether</p> <p>9 that MPA fell within the data set as to whether that</p> <p>10 consumer had relied on the misrepresentation by Sears</p> <p>11 upon entering that MPA?</p> <p>12 A I see. No, that ultimately fell outside the</p> <p>13 scope of my assignment. I assumed the allegations for</p> <p>14 all three claims were true and focused my analysis</p> <p>15 on -- of damages methodology could be conducted</p> <p>16 without individualized inquiry.</p> <p>17 Q Do you know if Sears maintains data on</p> <p>18 statements made to its MPA customers at the time they</p> <p>19 enter into agreements?</p> <p>20 A No, I didn't look into that.</p> <p>21 Q Okay. Okay. I wanted to ask you about your</p> <p>22 sources of data that you list -- that you list in</p> <p>23 Exhibit B to your report that you relied on.</p> <p>24 A Okay.</p> <p>25 Q Did you choose these sources?</p>
<p style="text-align: right;">Page 103</p> <p>1 I think this language is included in the MPA</p> <p>2 agreement -- that sometimes the refund that was</p> <p>3 offered was prorated based on the time that had lapsed</p> <p>4 since the start of the MPA agreement.</p> <p>5 So in those cases, sometimes Sears offered a</p> <p>6 partial refund to reflect the amount of time that was</p> <p>7 left.</p> <p>8 Q Okay. In Paragraph 34, when you discuss</p> <p>9 the -- under the claimants under the Pennsylvania</p> <p>10 consumer fraud putative class, as you stated earlier,</p> <p>11 that class differs because of the statute of</p> <p>12 limitations and because it applies only to</p> <p>13 Pennsylvania residents?</p> <p>14 A That's correct.</p> <p>15 Q Right, okay. Did you take into account in</p> <p>16 your methodology with regard to whether an MPA in that</p> <p>17 class fell within the data set or not if the customer</p> <p>18 relied on a misrepresentation by Sears upon entering</p> <p>19 their MPA?</p> <p>20 A Would you mind repeating that question. I'm</p> <p>21 sorry. I just want to make sure I have it.</p> <p>22 Q Okay. So the data set that would be for the</p> <p>23 claims under the Pennsylvania Consumer Fraud Act --</p> <p>24 A Okay.</p> <p>25 Q -- would include Pennsylvania -- only</p>	<p style="text-align: right;">Page 105</p> <p>1 A Yes.</p> <p>2 Q Did you ask for these specific documents</p> <p>3 that you relied on?</p> <p>4 A From whom?</p> <p>5 Q From plaintiff's counsel.</p> <p>6 A Oh, no, not necessarily. I wouldn't have</p> <p>7 known the specific documents to ask for in getting</p> <p>8 started. We had the full production available to us.</p> <p>9 And as I began to develop my damages methodology,</p> <p>10 there were key areas of information of research that I</p> <p>11 wanted to review to most importantly make sure that it</p> <p>12 was a sound methodology and based on data and</p> <p>13 information that appeared to be available from Sears.</p> <p>14 I may have asked the same from counsel, you</p> <p>15 know, is there any documents related to this question</p> <p>16 or this issue or that issue. But, other than that,</p> <p>17 no, I didn't.</p> <p>18 Q When you say there was "full production</p> <p>19 available," what did you mean?</p> <p>20 A As I understand it, the full production that</p> <p>21 has been made by Sears up until this point was also</p> <p>22 produced to me; and I had access to it.</p> <p>23 Q Document production?</p> <p>24 A Yes.</p> <p>25 Q As far as pleadings, are there certain</p>

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<p style="text-align: right;">Page 106</p> <p>1 pleadings that you typically ask for in your</p> <p>2 consulting?</p> <p>3 A Well, I'll start with the complaint,</p> <p>4 obviously, or the most recent operative complaint.</p> <p>5 And beyond that, when I'm talking with counsel about</p> <p>6 the nature of the case, I'll ask, you know, have there</p> <p>7 been any other, you know, any other motions or</p> <p>8 anything else that would inform my understanding of</p> <p>9 how the case has proceeded up until that point. And</p> <p>10 if there are, I would ask to look at those as well.</p> <p>11 Q And that includes -- you said "motions" as</p> <p>12 well as pleadings?</p> <p>13 A Yes, yes. Forgive me, I don't know the</p> <p>14 legal terminology if that wasn't responsive.</p> <p>15 Q One of the documents you relied on was</p> <p>16 Sears's answer to the complaint, the First Amended</p> <p>17 Complaint?</p> <p>18 A I believe it was for the -- one of the sets</p> <p>19 of interrogatories. I don't believe it was an answer</p> <p>20 to a complaint.</p> <p>21 Q Okay. It's not the answer. You're right,</p> <p>22 it's the answer to interrogatories.</p> <p>23 A Sorry.</p> <p>24 Q I was just going to say it wasn't cited in</p> <p>25 your report.</p>	<p style="text-align: right;">Page 108</p> <p>1 filed on the same day as my expert report. Outside of</p> <p>2 that, I can't recall any other documents as I sit here</p> <p>3 today.</p> <p>4 MS. HINES: Let me just take a break.</p> <p>5 (A brief break was taken.)</p> <p>6 BY MS. HINES:</p> <p>7 Q Let's go back to Paragraph 20 of your</p> <p>8 report, okay.</p> <p>9 A Okay, the prices.</p> <p>10 Q The prices, okay. You state, "According to</p> <p>11 Mr. Setzer, the Dainon warehouse can be required to</p> <p>12 determine how much Sears charged for a particular</p> <p>13 MPA."</p> <p>14 And is he talking about an -- is your</p> <p>15 understanding he's talking about the individual items</p> <p>16 on the MPA or just an MPA total price?</p> <p>17 A It's unclear from his testimony one way or</p> <p>18 the other. It's in the preceding sentence -- the</p> <p>19 following sentence, I was looking to clarify that</p> <p>20 point.</p> <p>21 Q Because in the next sentence you say,</p> <p>22 "Mr. Setzer further testified when a customer</p> <p>23 purchases an aftermarket MPA covering multiple</p> <p>24 products, the MPA is priced on a per-product basis,"</p> <p>25 right?</p>
<p style="text-align: right;">Page 107</p> <p>1 A Footnote 23 is --</p> <p>2 Q Okay. Did you ever ask to review an</p> <p>3 ineligible brands list?</p> <p>4 A No.</p> <p>5 Q Do you know if Sears maintains one?</p> <p>6 A No. I've seen on some eligible brands list</p> <p>7 where they'll say the following brands are no longer</p> <p>8 eligible that was included with eligible brands list.</p> <p>9 If they keep a separate ineligible brands list, I'm</p> <p>10 not aware of that; and I never asked to see it.</p> <p>11 Q And were there any other documents that you</p> <p>12 asked to look at that are not included in your Exhibit</p> <p>13 B?</p> <p>14 A In preparation for the deposition, I did</p> <p>15 look at the agreement, the MPA agreements that were</p> <p>16 entered into with the Greene's. I did take a look at</p> <p>17 those.</p> <p>18 Q Other than the ones attached to the</p> <p>19 complaint?</p> <p>20 A I believe that's the full set. They were</p> <p>21 Exhibit A to the complaint, and that's what I</p> <p>22 reviewed. So I believe that would be -- yes, what was</p> <p>23 attached to the complaint.</p> <p>24 And then I asked to look at the plaintiffs'</p> <p>25 memorandum in support of class certification that was</p>	<p style="text-align: right;">Page 109</p> <p>1 A Yes.</p> <p>2 Q But that does not mean that the customer</p> <p>3 actually gets a list of a per-product charge, right?</p> <p>4 A They do not get a per-product list charge.</p> <p>5 Q And then the next sentence, "Further, if</p> <p>6 customers wish to discuss the prices they are being</p> <p>7 charged for individual products covered under a single</p> <p>8 MPA, Mr. Setzer indicated that Sears's sales</p> <p>9 representatives would have access to the information</p> <p>10 necessary to discuss these individual product prices</p> <p>11 with customers," right?</p> <p>12 A Yeah.</p> <p>13 Q But would they -- he does not say that they</p> <p>14 actually give -- have a list of those prices or -- I</p> <p>15 think I need to go -- he -- they just can discuss it</p> <p>16 with these individuals?</p> <p>17 A As I read and interpreted Mr. Setzer's</p> <p>18 testimony, it's while they did not provide that on the</p> <p>19 actual agreement, the individual product prices for</p> <p>20 the MPA, if a customer wished to discuss any of those</p> <p>21 individual prices, he or she could do so by calling a</p> <p>22 Sears representative.</p> <p>23 And that representative through I believe</p> <p>24 the PA Resource Center, had the ability to discuss</p> <p>25 those prices with the customer with the implication</p>

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<p>1 being that they could pull up that information and</p> <p>2 discuss it. They had to have access to that</p> <p>3 information in order to discuss those prices. So --</p> <p>4 Q Okay. So you reply that because they were</p> <p>5 able to discuss those prices, they were pulling that</p> <p>6 up from some store data that Sears maintained?</p> <p>7 A Yes, in the PA Resource Center.</p> <p>8 Q This was if a customer called up after they</p> <p>9 purchased the MPA and were inquiring or at the time of</p> <p>10 purchase?</p> <p>11 A It didn't say either way. I don't recall</p> <p>12 him specifying one way or the other.</p> <p>13 Q And it's -- and the PABA Center maintaining</p> <p>14 that data, where in Dainon's -- I think Dainon's</p> <p>15 testimony doesn't say that -- or was it Katrina Means</p> <p>16 who said that?</p> <p>17 A I have to look at what was said on his</p> <p>18 deposition at Page 84 and 85.</p> <p>19 Q Go ahead and look. Take your time.</p> <p>20 A Okay. Does the customer receive the</p> <p>21 per-product pricing. Said it would be discussed by</p> <p>22 telephone, but the paperwork resent to the customer</p> <p>23 would not break down the individual prices.</p> <p>24 So in that regard, I misspoke a little bit</p> <p>25 about the PA Resource Center. The PA Resource Center</p>	<p>1 questions after that.</p> <p>2 MS. HINES: Pursuant to the protective order</p> <p>3 in this case.</p> <p>4 MR. BELLI: Yeah.</p> <p>5 (Signature having not been waived, the</p> <p>6 deposition of Christopher Jackman was</p> <p>7 concluded at 12:30 p.m.)</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 was that internal intranet that allowed Sears's</p> <p>2 representatives to access customer information.</p> <p>3 And so -- I may have connected those dots.</p> <p>4 But it's probably why I didn't say it specifically in</p> <p>5 the report. So sitting here, I may have</p> <p>6 inappropriately connected those dots.</p> <p>7 But from somewhere, it appears that they</p> <p>8 have the ability to pull up these pricing information</p> <p>9 and discuss it with customers.</p> <p>10 Q And I was just going back and checking these</p> <p>11 pages to see if it was stated on these pages, and I</p> <p>12 did not see that.</p> <p>13 A Right. And as it isn't mentioned</p> <p>14 specifically in the report. So as I was sitting here</p> <p>15 just a moment ago, I misspoke about that, the PA</p> <p>16 Resource Center.</p> <p>17 Q Okay. Okay. I don't have any other</p> <p>18 questions.</p> <p>19 MR. BELLI: I don't have any questions. But</p> <p>20 I would like when Mr. Jackman and his colleagues rates</p> <p>21 to be marked confidential on the transcript and also</p> <p>22 any testimony about Hankinson.</p> <p>23 I mean, Hankinson would be -- I guess he</p> <p>24 explicitly brings up a confidentiality agreement.</p> <p>25 And then there was probably four or five pages of</p>	<p>1 ACKNOWLEDGMENT OF DEPONENT</p> <p>2 I, Christopher Jackman, do hereby</p> <p>3 acknowledge that I have read and examined the</p> <p>4 foregoing testimony, and the same is true, correct,</p> <p>5 and complete transcription of the testimony given by</p> <p>6 me and any corrections appear on the attached Errata</p> <p>7 sheet signed by me.</p> <p>8</p> <p>9</p> <p>10 _____</p> <p>11 (Date) (Signature)</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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EXHIBIT 1 to EXHIBIT 1



Christopher Jackman

Executive Vice President
Monument Economics Group
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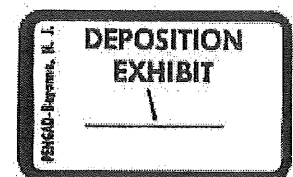
Professional Summary

Christopher Jackman has over thirteen years of experience assisting clients with complex litigation in the areas of antitrust, finance, and consumer fraud. Mr. Jackman specializes in supporting analyses for expert testimony in litigation and business matters. In addition, he has analyzed business valuation, liability, and damages issues in support of multi-million dollar awards and assisted counsel with economic damages estimates for pre-litigation and settlement purposes.

Mr. Jackman's experience spans industries including telecommunications, energy, healthcare, investment services, chemicals, airlines, cabotage, real estate, banking, baby products, oil, and consumer electronics. His experience includes developing sophisticated econometric models used to measure overcharges in horizontal price-fixing conspiracies and implicit prices associated with bundled goods in consumer fraud matters, as well as complex income, market and asset-based financial models for use in the valuation and forecasting processes. He has also developed and maintained current and interactive indexes in various industries for use in the evaluation of assets and securities.

Before co-founding Monument Economics Group, Mr. Jackman was a Managing Director at Nathan Associates. Prior to that, he was an Economist at Advanced Analytical Consulting Group, a Consultant at Econ One Research, Inc., and a Senior Associate at LECG Corp.

Mr. Jackman has a B.A. in Economics from Johns Hopkins University and an M.B.A. from Indiana University.



Education

- B.A., Economics, Johns Hopkins University, 2002
- M.B.A., Indiana University, 2014

Testifying Experience

Benjamin Hankinson, et al. v. R.T.G. Furniture Corp. et al.

- United States District Court Southern District of Florida
- Case No.: 9:15-cv-81139-COHN/SETZLER
- Declaration, August 31, 2016
- Testified at deposition, October 26, 2016
- Opinion concerning data processing and analysis issues
- Retained by Cohen Milstein Sellers & Toll PLLC

Selected Consulting Experience

- *In Re: Ductile Iron Pipe Fittings ("DIPF") Direct Purchaser Antitrust Litigation.* In a class action antitrust matter involving ductile iron pipe fittings, managed analysis of class certification, merits, and damages issues, industry research and preparation of expert declaration and exhibits.
- *In Re: Cast Iron Soil Pipe and Fittings Antitrust Litigation.* In a class action antitrust matter involving cast iron soil pipes and fittings, managed analysis of class certification and damages issues, industry research and preparation of expert declaration and exhibits.
- *Lane's Gifts and Collectibles, LLC v. Microsoft Online, Inc.* In a class action antitrust matter involving online advertisements, managed analysis of damages issues, as well as the preparation of expert report and exhibits.
- *BlueCross BlueShield of Tennessee, Inc., et al. v. King Pharmaceuticals, Inc., et al.* In an antitrust matter involving the delayed entry of a generic muscle relaxant drug, managed analysis of defendant transaction-level database, and the preparation of expert report and exhibits.
- *Fond Du Lac Bumper Exchange Inc., et al. v. Jui Li Enterprise Company Ltd. et al.* In a class action antitrust matter involving aftermarket automotive sheet metal, managed analysis of class certification, merits, and damages issues, industry research and preparation of expert reports and exhibits.
- *In Re: Polyurethane Foam Antitrust Litigation.* In a class action antitrust matter involving flexible, slabstock polyurethane foam, managed analysis of class certification, merits, and damages issues, industry research and preparation of expert reports and exhibits, as well as critiques of opposing expert analyses.
- *Thomas Boland, v. Consolidated Multiple Listing Service, Inc., et al.* In a class action antitrust matter involving commission rates associated with real estate services, assisted expert with analysis of class certification issues, industry research, and

preparation of expert report. Managed development of damages model using defendants' transaction-level data.

- *Eugene Allan, et al., v. Realcomp II, Ltd., et al.* In a class action antitrust matter involving commission rates associated with real estate services, assisted expert with analysis of class certification issues, industry research, preparation of expert report and critique of opposing expert analysis. Managed development of damages model using defendants' transaction-level data.
- *Nancy Jean Adams v. Apple, Inc., et al.* In a class action antitrust matter involving eBooks, managed analysis of class certification issues, industry research and preparation of expert affidavit, report, and exhibits.
- *In Re: Titanium Dioxide Antitrust Litigation.* In a class action antitrust matter involving titanium dioxide pigment, managed analysis of class certification, merits, and damages issues, industry research and preparation of expert declarations and exhibits, as well as critiques of opposing expert analyses.
- *Danny Lynn Electrical & Plumbing, LLC, et al., v. Veolia ES Solid Waste Southeast, Inc.* In a class action RICO matter involving certain fees associated with waste removal services in the southeastern United States, managed analysis of class certification issues, industry research, appropriateness of defendants' fee calculations, and worked with testifying expert on development of methodology for measuring damages and the preparation of expert report and exhibits.
- *Thomas L. Logue, et al., v. West Penn Multi-List, Inc. et al.* In a class action antitrust matter involving commission rates associated with real estate services, assisted expert with analysis of class certification issues, industry research, preparation of expert report and critique of opposing expert analysis. Managed development of damages model using defendants' transaction-level data.
- *In Re: Puerto Rican Cabotage Antitrust Litigation.* In a class action antitrust matter involving cabotage services along the U.S.-Puerto Rican trade route, managed analysis of class certification issues, market research, preparation of expert affidavits and response to opposing experts' affidavits. Performed estimate of damages for settlement purposes and assisted counsel with settlement claims process.
- *In Re: Mercedes-Benz Tele Aid Contract Litigation.* In a class action consumer fraud matter involving telematic equipment in Mercedes-Benz vehicles, managed analysis of market definition and class-wide impact, discovery support, market research, and preparation of expert report and exhibits.
- *In Re: Aftermarket Automotive Lighting Products Antitrust Litigation.* In a class action antitrust matter involving aftermarket auto lights, managed analysis of defendants' transaction-level databases for use in damages model.
- *Clarke and Rebecca Wixon, et al., v. Wyndham Resort Development Corp. (F/K/A Trendwest Resorts, Inc.), et al.* In a class action consumer fraud matter involving vacation timeshares, managed class certification analysis, discovery support, industry research, preparation of expert report and testimony, estimation of damages and response to opposing expert's reports.

- *Nathan Nygren, et al, v. Hewlett-Packard Company*. In a class action consumer fraud matter involving wireless functionality in laptop computers, managed market definition, class-wide impact and damages analyses, discovery support, preparation of expert report, testimony and response to opposing expert's report.
- *In Re: General Motors OnStar Litigation*. In a class action consumer fraud matter involving OnStar telematic equipment, managed analysis of class certification issues, damages analysis, discovery support, industry research, preparation of expert report and testimony, and critique of opposing expert's analysis.
- *McDonough, et al, v. Toys "R" Us, Inc. d/b/a Babies "R" Us, et al*. In a class action antitrust matter involving resale price maintenance agreements associated with various baby products, managed industry research, discovery support, and preparation of expert report and exhibits focusing on class-wide damages associated with the alleged misconduct. Developed and implemented damages model.
- *Tess Wiltz D/B/A Opelousas Crawfish House, et al, v. Bayer Cropscience, L.P., et al*. In a class action product liability matter involving crawfish, assisted expert with industry research, discovery support, and preparation of expert report, exhibits and testimony.
- *Chevron Phillips Chemical Company LP, v. BDP International, Inc.* In a breach of contract matter involving currency exchange fees, managed industry research, discovery support, verification of plaintiff's own damages model, alternative measurement of damages, and preparation of expert report and testimony.
- *Michael Harris, v. LG Philips LCD Co., Ltd., et al*. In a class action antitrust matter involving LCD panels and products, assisted expert with analysis of class certification issues, damages analysis, industry research, discovery support, preparation of expert report and exhibits and critique of opposing expert analysis.

Professional Experience

- Monument Economics Group, LLC, Arlington, VA, Executive Vice President, October 2016 - present
- Nathan Associates Inc., Arlington, VA, Managing Director, January 2013 - October 2016
- Advanced Analytical Consulting Group, Inc., Arlington, VA, Economist, March 2011 - January 2013
- Econ One Research, Inc., Washington, DC, Consultant, September 2008 - March 2011
- LECC, Corp., Cambridge, MA and Washington, DC, Senior Associate, February 2004 - September 2008

Publications

- "Mini-Roundtable - Evaluating Damages" (with Russell Lamb), *Corporate Disputes Magazine*, October-December 2014, 97-103.

Materials Relied Upon

Pleadings and Legal Correspondence

United States District Court for the Northern District of Illinois Eastern Division, Nina Greene, et al., Plaintiffs, v. Sears Protection Company, et al., Defendants, No. 1:15-cv-02456, Memorandum Opinion and Order, filed February 2, 2016.

United States District Court for the Northern District of Illinois Eastern Division, Nina Greene, et al., Plaintiffs, v. Sears Protection Company, et al., Defendants, No. 1:15-cv-02456, First Amended Class Action Complaint, filed March 11, 2016.

United States District Court for the Northern District of Illinois Eastern Division, Nina Greene, et al., Plaintiffs, v. Sears Protection Company, et al., Defendants, No. 1:15-cv-02456, Memorandum Opinion and Order, filed March 27, 2017.

United States District Court for the Northern District of Illinois Eastern Division, Nina Greene, et al., Plaintiffs, v. Sears Protection Company, et al., Defendants, No. 1:15-cv-02456, Defendants' Second Supplemental Answer to Plaintiffs' Interrogatory No. 3 of Plaintiffs' Second Set of Interrogatories, November 30, 2016.

Depositions and Declarations

Deposition and Exhibits of Dainon Setzer, December 17, 2015.

Deposition and Exhibits of Dainon Setzer, June 28, 2016.

Deposition and Exhibits of Katrina Means, June 29, 2016.

Produced Documents and Data

Documents

SEARS0000397-0401.

SEARS0008985-09056.

SEARS0008724-743.

SEARS0009942.

EXHIBIT 2 to EXHIBIT 1

CD corporate disputes

OCT-DEC 2014

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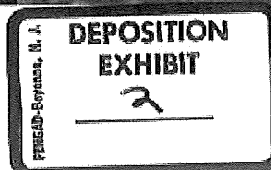
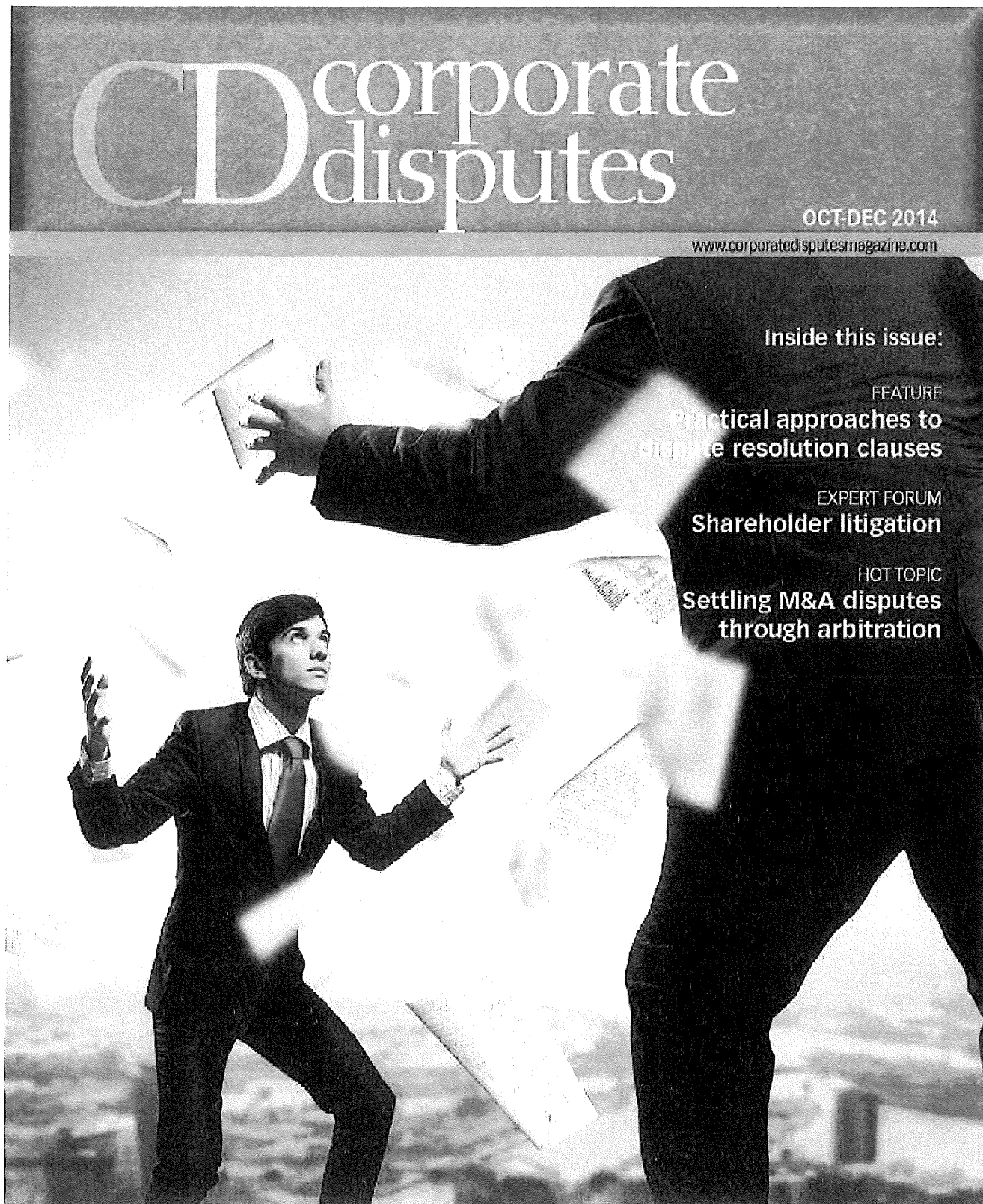
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EVALUATING DAMAGES



EVALUATING DAMAGES

MINI-ROUNDTABLE

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Christopher Jackman has over 10 years of experience assisting clients with complex litigation in the areas of antitrust, finance and consumer fraud. Mr Jackman specialises in supporting analyses for expert testimony in litigation and business matters. In addition, he has analysed business valuation, liability and damages issues in support of multimillion dollar awards, and helped counsel with economic damages estimates for prelitigation and settlement purposes. Mr Jackman's experience spans industries including telecommunications, energy, healthcare, investment services, airlines, cabotage, real estate, banking, baby products, oil and consumer electronics.

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Russell Lamb is an expert in antitrust economics and has testified concerning antitrust liability, impact and damages. He has an extensive background in applied econometrics and has developed econometric models to measure damages in a number of matters involving allegations of horizontal price fixing. He has provided expert testimony in State and Federal Courts in the United States and in Canada on a range of issues, including class-certification and economic damages in antitrust, RICO and consumer fraud matters. In addition, he has provided expert advice to client attorneys at all levels of the litigation.

CD: In your experience, what are the key challenges to successfully evaluating the value of damages in relation to a commercial dispute?

Jackman: One of the most challenging aspects of the evaluation of damages is obtaining complete and reliable data and information to be used as inputs into a damages analysis. In the event such information is unavailable through discovery, a damages expert must oftentimes devote significant time and resources into finding said information elsewhere, such as the public domain. Should this information not be available elsewhere, the damages expert must then seek to obtain reasonable and reliable proxy information. This process can not only drive up the cost of an expert's services, but depending on the quality of information available to the expert, it can also negatively impact the reliability and accuracy of his or her measurement of damages.

Lamb: To build on this, I would stress that the condition the data are in when they are produced to the expert can impact the process of evaluating damages. For example, I recently worked on a case dealing with real estate brokerage commission rates where the produced datasets contained many different fields that appeared to contain commission rate data, yet there was no clear indication as to

which of the fields was the appropriate one to use for our analysis, as no clarifying information was otherwise available. In this instance, had these commission fields been clearly identified in the data, we could have selected the correct one and continued on with our analysis. However, given the uncertainty we faced, we had to undertake an extensive comparative analysis of these data to determine which were the appropriate to use before we could continue on with our damages analysis.

CD: How important is it for parties considering whether to pursue a commercial dispute to thoroughly assess the potential damages involved? How regularly do parties rush into proceedings without fully understanding this issue?

Jackman: I would say that for any party pursuing a commercial dispute with the intention of being awarded damages, it would be a good idea to not only ascertain a preliminary understanding of the magnitude of potential damages, but also the likelihood said party will prevail on its claim. Pursuing a commercial dispute can be a costly and resource-intensive proposition. As such, parties will want to understand whether or not potential damages are high enough to not only cover all monetary costs of pursuing such a claim, but also the opportunity costs of doing so.

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Lamb: In my experience, parties don't typically rush into corporate disputes without first gaining a preliminary understanding of potential damages at issue in the matter. Clients often contact me or my staff to conduct preliminary market and damages analyses to help their clients better understand this issue before a lawsuit is filed. By the time a lawsuit is filed and I have been retained as damages expert, parties that are being represented by my clients typically have a solid understanding of this issue and, based on this understanding, have chosen to proceed with pursuing their dispute.

CD: Given the financial complexities of a typical claim, is it advisable that parties enlist the aid of a damages expert? What advice can you give to firms on selecting and engaging an expert?

Jackman: It's no secret that, depending on the type and scope of a given dispute, legal fees incurred via corporate disputes can be quite expensive. Additionally, parties might be surprised to find that, after an independent analysis of a company and the market it operates in, a measurement of damages that they suffered as a result of an alleged misconduct could be lower than they had anticipated. In these situations, when factoring the legal fees associated with pursuing a given claim, they might determine that pursuing such a claim may not be financially prudent. As such, if a party

had any uncertainty as to the economics associated with pursuing a claim, a wise first step would be to engage an expert to aid in achieving a better understanding of their prospects.

Lamb: When selecting and engaging an expert, parties should seek an expert with a proven track record in disputes similar to the one they are facing. A good first step would be to ask for recommendations from legal contacts who deal in the same type of dispute as the one you're currently involved, or industry colleagues who have successfully engaged in a similar dispute. Additionally, you could search for recent court rulings dealing with similar issues as the ones you're facing to see if they cited a certain expert's analysis favourably in making their decision.

CD: How does the role of the damages expert differ in litigation compared to arbitration or mediation, for example? How might the damages expert assist counsel in preparing a case for trial, arbitration or mediation?

Lamb: The role of the damages expert is not materially different in a litigation, arbitration or mediation setting. The role of an expert hired by the plaintiffs is two-fold. First, an expert determines the amount of damages – if any – suffered by the injured party using sound economic principles and

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a scientific approach. This includes determining if there are damages resulting from a defendant's prior actions or if injunctive relief is necessary to prevent future damages. Second, an expert must also be able to clearly explain to the judge, jury, arbitration panel or mediator why it is that there are damages. Arbitration and mediation share these basic requirements with litigation.

Jackman: The burden that a plaintiffs' expert faces in evaluating damages is a high one. Experts hired by the defendants do not share this same high burden. Rather, a defendant's expert need only demonstrate that a plaintiff's expert has not met this burden – that is, that a plaintiff's expert has demonstrated no sound or reliable analysis for determining the existence and magnitude of damages. As such, a defendant's expert's analysis will focus on determining if there are problems or concerns associated with the damages analysis conducted by a plaintiff's expert. Similar to a plaintiff's expert, however, a defendant's expert's approach will not differ depending on whether the dispute is being heard by a judge and jury, arbitration panel or mediator. While the expert's audience is different, neither his or her assignment, nor approach, differs across these settings.

CD: Can you discuss the methods and strategies experts employ to establish the value of damages in a timely and cost effective fashion?

Jackman: Each case is going to present a unique set of facts and allegations, as well as varying degrees of available data and information for use as inputs into a damages analysis. As such, the methods and strategies an expert employs are

"When selecting and engaging an expert, parties should seek an expert with a proven track record in disputes similar to the one they are facing."

*Russell L. Lamb,
Nathan Associates Inc.*

going to vary to some degree in order to account for the different circumstances each case presents. In this kind of environment, the key to performing a damages analysis in a timely and cost effective manner is consistency in how each case is approached from the outset.

EVALUATING DAMAGES

MINI-ROUNDTABLE

Lamb: That's right. For instance, we follow a set of best practices that cover just about every aspect of the work that we do for our clients, from document review to data analysis to the formatting of reports and accompanying exhibits. These best practices are taught to every new employee upon their hiring to ensure a seamless transition of this information over time. Therefore, when performing complex analyses, often under tight deadlines, staff are always able to remain on the same page and follow along with each other's work. By strictly abiding by these best practices, we are able to eliminate many of the communication barriers that can often impede our efficiency and progress, not to mention jeopardise the consistency and accuracy of our analyses.

CD: Are you seeing any changes in the way that damages are analysed and quantified? Do you expect further changes to the process to evolve going forward?

Lamb: Regarding matters of antitrust, a string of recent Supreme Court rulings have incrementally raised the burden for plaintiffs' experts with respect to the evaluation of damages. Most recently, in the *Comcast v. Behrend* decision the Court ruled that a rigorous analysis must be performed to

determine if a plaintiff's expert's damages analysis is consistent with the plaintiff's theory of liability. This ruling altered the nature of damages analysis in that experts must now pay much closer attention to the facts and details of a case to ensure that their

"One of the biggest challenges an expert faces in evaluating damages is when the data produced in the matter is incomplete or otherwise unreliable in one way or another."

*Christopher Jackman,
Nathan Associates Inc.*

damages analysis can be commonly applied to all class members in a way that aligns with plaintiffs' allegations. While this ruling is commonly applied to class action antitrust matters, it is my opinion that it may have broader implications into other types of corporate disputes.

Jackman: Decisions like *Comcast* will have a significant impact on the importance of a damages expert's analysis of the underlying data in the case. As the burden that the Court applies to an expert's damages methodology increases, said expert must undertake a more rigorous, and often time

consuming, analysis of the data. As discussed earlier, one of the biggest challenges an expert faces in evaluating damages is when the data produced in the matter is incomplete or otherwise unreliable in one way or another. Traditionally, experts dealt with these issues by making reasonable, simplifying assumptions about the data – to the extent possible – and proceeded on with their analysis. However, decisions like *Comcast* can significantly impact an expert's ability to do so because of the heightened burden he or she faces in ensuring that his or her damages analysis is consistent with the allegations in the case.

CD: When it comes to quantifying damages, what final advice would you give to companies assessing their prospects for pursuing a commercial dispute?

Lamb: Before pursuing a commercial dispute, companies should strongly consider investing a relatively small amount of money up front to engage an expert to assess the magnitude of damages they

have suffered as a result of the disputed action on a preliminary basis, as well as legal counsel to help them determine the likelihood that they prevail on their claims. Pursuing such claims can be a capital- and resource-intensive proposition, so companies should seek to learn all that they can about their prospects ahead of time to make sure such a pursuit would be worth their while.

Jackman: After consulting with a damages expert on their damages prospects related to a given dispute, it is not uncommon for companies to be surprised to learn that the damages they suffered are actually much larger than they would have originally thought. In this regard, I would recommend companies that are on the fence about whether or not to pursue a dispute to make this upfront investment to consult with a damages expert and legal counsel to see what their damages prospects are. Doing so often allows a company to uncover additional sources of damages that they suffered in a given dispute, changing the dynamics of the situation and making pursuing said dispute a worthy endeavour. (1)

EXHIBIT 3 to EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

NINA AND GERALD GREENE,

Plaintiffs,

v.

SEARS PROTECTION Company, SEARS,
ROEBUCK and Co. and SEARS
HOLDINGS Corporation,

Defendants.

No. 1:15-cv-02456

Judge Jorge L. Alonso

Magistrate Judge Michael T.
Mason

EXPERT REPORT

Christopher Jackman
Executive Vice President
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Arlington, VA 22209

July 28, 2017

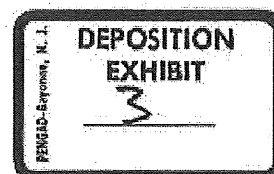


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I. Introduction

A. Background

1. I am the Executive Vice President at Monument Economics Group, LLC ("Monument"), an economic consulting firm based in Arlington, Virginia. Monument provides economic research and quantitative and statistical analyses to clients in the United States, Canada, and elsewhere internationally. I graduated from Johns Hopkins University with a B.A. in Economics. I also earned an M.B.A. from Indiana University.
2. Prior to co-founding Monument, I held positions at other consulting firms. From 2004 until 2008, I was a Research Analyst (later Associate and Senior Associate) at LECG in Cambridge, MA, and Washington, DC; from 2008 until 2011, I was a Consultant at Econ One Research in Washington, DC; from 2011 until 2013 I was an Economist at Advanced Analytical Consulting Group in Arlington, VA; and from 2013 until 2016, I was a Managing Director at Nathan Associates Inc. where I managed the litigation consulting activities in the Arlington, VA and Irvine, CA offices. Throughout my career, I have consulted on a variety of complex litigation matters in areas such as antitrust, finance, and consumer fraud. I have analyzed business valuation, liability, and damages issues in support of multi-million dollar awards and assisted counsel with economic damages estimates for pre-litigation and settlement purposes. My experience includes developing econometric models used to measure overcharges in horizontal price-fixing conspiracies and implicit prices associated with bundled goods in consumer fraud matters, as well as complex income, market and asset-based financial models for use in valuation and forecasting. I have also developed and maintained current and interactive indexes in various industries for use in the evaluation of assets and securities. Many of the matters I have worked on and managed have involved the cleaning, coding, compilation, and analysis of large transaction-level databases. A copy of my C.V. is attached to this report as Appendix A.

3. Monument is being compensated for my work in this matter at my customary hourly rate of ^{Redacted} per hour. Monument's compensation in this matter is not contingent upon the content of my Expert Report or the outcome of this litigation.

4. I understand that Plaintiffs allege that Defendants¹ Sears Protection Company ("SPC") and Sears, Roebuck and Co. ("SRC") (collectively "Sears") entered into master protection agreements ("MPAs") that were "deceptive and illusory because Sears did not in fact provide the bargained for coverage of the products that the agreements purported to cover."² I understand that customers "can enter into an MPA by adding protection coverage when the product is originally purchased at a store, or online."³ Further, I understand customers can obtain "coverage to other products in the house, post-point-of-purchase," by speaking with a Sears technician or a Sears call center.⁴ I understand Plaintiffs allege that "Sears engaged in a course of conduct whereby it deceived consumers, misrepresenting to customers that their products were covered by the master service agreement after Plaintiffs and members of the Class identified the products that they wanted to include in the agreements and paid the charges Sears billed for such coverage."⁵ I understand Plaintiffs allege that "Sears did not determine whether Sears actually could or would provide service maintenance coverage for those products until a repair or service request was made by the owner."⁶ I understand Plaintiffs allege that "Sears continued to charge for

¹ I understand that the Court has dismissed Sears Holdings Corporation as a Defendant in this matter. See United States District Court for the Northern District of Illinois Eastern Division, Nina Greene, et al., Plaintiffs, v. Sears Protection Company, et al., Defendants, No. 1:15-cv-02456, Memorandum Opinion and Order, filed February 2, 2016; and United States District Court for the Northern District of Illinois Eastern Division, Nina Greene, et al., Plaintiffs, v. Sears Protection Company, et al., Defendants, No. 1:15-cv-02456, Memorandum Opinion and Order, filed March 27, 2017.

² United States District Court for the Northern District of Illinois Eastern Division, Nina Greene, et al., Plaintiffs, v. Sears Protection Company, et al., Defendants, No. 1:15-cv-02456, First Amended Class Action Complaint, filed March 11, 2016 (hereafter "Complaint") at ¶¶2-3.

³ Complaint at ¶24.

⁴ Complaint at ¶24.

⁵ Complaint at ¶41.

⁶ Complaint at ¶41.

products it could not and never intended to repair or service, and that "Sears did not communicate to its customers that it could not or would not provide service maintenance coverage."⁷ I further understand that Plaintiffs allege that Sears did not return all monies "wrongfully received for products that Sears does not actually cover."⁸

B. Assignment

5. I have been asked by Counsel for the Plaintiffs in this matter to analyze whether a standard and reliable methodology exists that would allow me to utilize data and information possessed by Sears to measure damages suffered by proposed class members as a result of the alleged misconduct (if it is found to have taken place) without resorting to individualized inquiry under three causes of action: a breach of express contract; unjust enrichment; and a violation of Pennsylvania's Unfair Trade Practices and Consumer Protection Law.⁹ I understand from Counsel for the Plaintiffs that the proposed class with respect to Plaintiffs' breach of express contract claim ("Breach of Contract Class") is defined as follows:

All individuals and entities who paid for aftermarket MPAs (including post-point-of-sale purchases of coverage, purchases of coverage for products bought from a retailer other than Sears, and/or subsequent renewals of coverage) for products which were not covered by or eligible for coverage under the MPA, and never received a full refund.

I understand from Counsel for the Plaintiffs that the earliest date that the Court could apply the statute of limitations with respect to the proposed Breach of Contract Class is March 25, 2000. Therefore, I have limited my analysis of the

⁷ Complaint at ¶41.

⁸ Complaint at ¶41.

⁹ For the purposes of my analysis contained in this Expert Report, I have assumed that the Plaintiffs prevail on their claims with respect to the alleged misconduct.

proposed Breach of Contract Class to the period from March 25, 2000 to the present ("Relevant Breach of Contract Period"),¹⁰

6. I understand from Counsel for the Plaintiffs that the proposed class with respect to Plaintiffs' unjust enrichment claim ("Unjust Enrichment Class") is defined as follows:

All individuals and entities who paid for aftermarket MPAs (including post-point-of-sale purchases of coverage, purchases of coverage for products bought from a retailer other than Sears, and/or subsequent renewals of coverage) for products which were not covered by or eligible for coverage under the MPA, and never received a full refund.

7. I understand from Counsel for the Plaintiffs that the earliest date that the Court could apply the statute of limitations with respect to the proposed Unjust Enrichment Class is March 25, 2005. Therefore, I have limited my analysis of the proposed Unjust Enrichment Class to the period from March 25, 2005 to the present ("Relevant Unjust Enrichment Period").¹¹

8. I understand from Counsel for the Plaintiffs that the proposed class with respect to Plaintiffs' Pennsylvania Unfair Trade Practices and Consumer Protection Law claim ("Consumer Fraud Class") is defined as follows:

All residents of Pennsylvania who paid for aftermarket MPAs (including post-point-of-sale purchases of coverage, purchases of coverage for products bought from a retailer other than Sears, and/or subsequent renewals of coverage) for products which were

¹⁰ Should any additional information regarding any statute of limitation applied by the Court with respect to Plaintiffs' breach of contract claim be made known at a time following the filing of this Expert Report, I reserve the right to revise my analysis accordingly in light of such new information.

¹¹ Should any additional information regarding any statute of limitation applied by the Court with respect to Plaintiffs' unjust enrichment claim be made known at a time following the filing of this Expert Report, I reserve the right to revise my analysis accordingly in light of such new information.

not covered by or eligible for coverage under the MPA, and never received a full refund.

I understand from Counsel for the Plaintiffs that the earliest date that the Court could apply the statute of limitations with respect to the proposed Consumer Fraud Class is March 25, 2004. Therefore, I have limited my analysis of the proposed Consumer Fraud Class to the period from March 25, 2004 to the present ("Relevant Consumer Fraud Period").¹²

C. Materials Reviewed

9. In performing my analysis, I have reviewed a variety of materials that were produced as part of this litigation, including sample datasets, deposition transcripts, and miscellaneous Sears company documents. A complete list of the materials I have relied upon in forming my opinions is contained in Appendix B. I understand that discovery is ongoing in this matter. Should any additional information regarding Sears' MPAs be made available to me at a later stage of this litigation, I reserve the right to revise my analysis accordingly.

D. Conclusions

10. Based on the materials I have reviewed to date, I have determined that a standard and reliable methodology exists that could allow me to utilize data and information likely possessed by Sears to measure damages suffered by members of the proposed Breach of Contract, Unjust Enrichment, and Consumer Fraud Classes during the Relevant Breach of Contract Period, Relevant Unjust Enrichment Period, and Relevant Consumer Fraud Period, respectively, as a result of the alleged misconduct (if it is found to have taken place) without resorting to

¹² Should any additional information regarding any statute of limitation applied by the Court with respect to Plaintiffs' consumer fraud claim be made known at a time following the filing of this Expert Report, I reserve the right to revise my analysis accordingly in light of such new information.

individualized inquiry.¹³ I discuss the bases of these conclusions in more detail below.

II. Key Sears Databases

11. Based on my review of the materials that have been made available to me to date, Sears appears to maintain data and information that could likely allow to measure damages suffered by members of the proposed Breach of Contract, Unjust Enrichment, and Consumer Fraud Classes during the Relevant Breach of Contract Period, Relevant Unjust Enrichment Period, and Relevant Consumer Fraud Period, respectively, as a result of the alleged misconduct without resorting to individualized inquiry. This data and information appears to be spread out over a number of databases. Connecting these databases for Sears sales associates is a software platform called Ciboodle, which is a “desktop system that associates use to retrieve and produce price quotes to customers.”¹⁴ “Ciboodle is the more mouse-click-friendly user application that the majority of front line agents use.”¹⁵ Feeding into Ciboodle are two key Sears databases: NPS and NPI.¹⁶ According to Katrina Means, Director of Sears’ Service Contracts division, NPS is a database that stores information related to “the service side of the business,” while NPI is a database related to the “service contract side” of the business and stores “all of the Pricing Customer Service Contract Agreements.”¹⁷ Collectively, NPS and NPI are referred to as the “Legacy system.”¹⁸ Storing the data that feeds Sears’

¹³ Should any additional information regarding Sears’ MPAs be made available to me at a later stage of this litigation, I reserve the right to revise my opinions in light of this new information at the appropriate time.

¹⁴ United States District Court for the Northern District of Illinois Eastern Division, Nina Greene, et al., Plaintiffs, v. Sears Protection Company, et al., Defendants, No. 1:15-cv-02456, Oral Deposition of Dainon Setzer, December 17, 2015 (hereafter “December 2015 Setzer Deposition”) at 121:2-14.

¹⁵ December 2015 Setzer Deposition at 121:21-122:9.

¹⁶ United States District Court for the Northern District of Illinois Eastern Division, Nina Greene, et al., Plaintiffs, v. Sears Protection Company, et al., Defendants, No. 1:15-cv-02456, Deposition of Katrina Means, June 29, 2016 (hereafter “Means Deposition”) at 23:13-18, 63:2-6.

¹⁷ Means Deposition at 6:14-18, 22:23-23:12.

¹⁸ Means Deposition at 23:19-24:1. I have noted that, at his December 2015 deposition, Dainon Setzer of Sears appears to refer to NPS singularly as the “legacy system the lives kind of below Ciboodle,” expanding further that it’s a “mainframe green screen old technology, but it’s still the

Legacy system is its data warehouse, or LCL.¹⁹ According to Dainon Setzer, National Operations Manager at Sears, this data warehouse functions as “the server behind NPS.”²⁰ Further, Mr. Setzer testified that the information stored in Sears’ data warehouse goes back “at least 20 years.”²¹

12. In addition to Sears’ data warehouse and Legacy system, Sears also maintains a “merchandise brand qualification” called Manage Merchandise Information (“MMI”) that is incorporated into Ciboodle’s infrastructure that contains information on the brands and products that are covered under its MPAs.²² MMI was implemented into Ciboodle on March 17, 2009.²³

13. Prior to the incorporation of MMI into Ciboodle, Sears associates relied on an “Eligible Brands List” that was maintained internally by Sears to determine if a given product was eligible for coverage under an MPA.²⁴ The information contained in the Eligible Brands List was accessible through the PA Resource Center, which is an internal Sears “intranet home page for protection agreement coverage,” which is “meant as the internal associate-facing helpful tool place for administering and selling and talking about and understanding protection agreements.”²⁵ From time to time, the Eligible Brands List is revised “[c]ompletely as brands come and go in coordination with product engineers and repair services.”²⁶ According to Mr. Setzer, prior versions of the Eligible Brands

source of most of our pricing and customer database.” See December 2015 Setzer Deposition at 121:21-122:9.

¹⁹ Means Deposition at 62:8-63:6.

²⁰ December 2015 Setzer Deposition at 16:1-4, 175:19-23.

²¹ December 2015 Setzer Deposition at 176:23-177:1.

²² See December 2015 Setzer Deposition at 137:18-139:9 and Exhibit 10 at SEARS0003023. See, also, Means Deposition at 24:2-8; SEARS0009942.

²³ United States District Court for the Northern District of Illinois Eastern Division, Nina Greene, et al., Plaintiffs, v. Sears Protection Company, et al., Defendants, No. 1:15-cv-02456, Defendants’ Second Supplemental Answer to Plaintiffs’ Interrogatory No. 3 of Plaintiffs’ Second Set of Interrogatories, November 30, 2016, p. 4.

²⁴ Means Deposition at 93:23-94:8, 108:14-22, and Exhibit 11; December 2015 Setzer Deposition at 152:16-157:24. The Eligible Brands List is still maintained by Sears. See December 2015 Setzer Deposition at 152:20-155:20.

²⁵ December 2015 Setzer Deposition at 63:13-15, 118:3-120:8; Means Deposition at 108:14-109:4.

²⁶ December 2015 Setzer Deposition at 153:16-154:15.

List have been “saved somewhere” by Sears, and that there is a way to determine the “revision date” of those documents.²⁷ Mr. Setzer also testified that his recollection was that, when accessing the Eligible Brands List in the PA Resource Center, the user was able to see the revision date of the most current list.²⁸

14. I discuss in more detail below the data and information likely contained in these databases that could allow me to apply my methodology to measure damages suffered by proposed class members as a result of the alleged misconduct (if it is found to have taken place) without resorting to individualized inquiry. Should any additional information regarding the data and information maintained by Sears with respect to its MPAs be made available to me at a later stage of this litigation, I reserve the right to revise my opinions accordingly.

III. Breach of Contract Claims

15. As I previously discussed, I have been asked by Counsel to analyze whether a standard and reliable methodology exists that could allow me to utilize data and information possessed by Sears to measure damages suffered by proposed Breach of Contract Class members as a result of the alleged misconduct (if it is found to have taken place) without resorting to individualized inquiry. Based on the materials I have reviewed to date, it is my opinion that such a methodology exists. I discuss this methodology in more detail below.

A. Availability of data

16. I discussed above certain key databases maintained by Sears. In this section, I discuss the types of data and information likely contained in these

²⁷ December 2015 Setzer Deposition at 153:16-158:9. At his December 2015 deposition, Mr. Setzer caveated this testimony to reflect that he was only certain of this practice dating back to 2010, when he took over responsibility of updating the Eligible Brands List. See December 2015 Setzer Deposition at 155:15-157:24. However, evidence I have reviewed suggests that Sears has likely maintained versions of the Eligible Brands List prior to 2010 that include a revision date on them. For example, one set of Eligible Brand Lists produced as part of this litigation reflect a revision date of March 31, 2004 for certain categories of products. See, for example, SEARS0008985-09056. Further, Mr. Setzer testified that the Eligible Brands List has been used by Sears since at least 1996 when he started working for Sears. See December 2015 Setzer Deposition at 37:10-13, 142:14-143:8.

²⁸ December 2015 Setzer Deposition at 154:16-155:14.

databases that could allow me to measure damages suffered by proposed Breach of Contract Class members as a result of the alleged misconduct without resorting to individualized inquiry.

17. For example, to start, Sears' data warehouse can be queried in order to identify all MPAs in existence at any given time, including during the Relevant Breach of Contract Period.²⁹ Such a dataset can then be limited to aftermarket MPAs sold by Sears.³⁰ Further, based on my review of the materials produced to date, certain key information about the customers who purchased aftermarket MPAs from Sears during this time are likely available. For example, the name and address of each customer who purchased a given aftermarket MPA during the Relevant Breach of Contract Period, as well as the Sears-generated customer number associated with each of those customers, can be queried from the data warehouse.³¹ In addition, the agreement number (which is also referred to as the certificate number) associated with each MPA sold by Sears can be queried from the data warehouse, as can the start and end dates associated with each MPA.³² Furthermore, a list of the products covered by a given MPA, including information on product type and brand, can be queried from Sears' data warehouse.³³

18. Another piece of information that could be used to measure damages suffered by proposed Breach of Contract Class members as a result of the alleged

²⁹ December 2015 Setzer Deposition at 175:1-177:1.

³⁰ For example, Katrina Means testified at deposition that a query could be built to identify MPAs that were sold that covered products that were not purchased at a Sears store or on Sears.com. See Means Deposition at 60:3-20, 76:20-78:17. See, also, United States District Court for the Northern District of Illinois Eastern Division, Nina Greene, et al., Plaintiffs, v. Sears Protection Company, et al., Defendants, No. 1:15-cv-02456, Deposition of Dainon Setzer, June 28, 2016 (hereinafter "June 2016 Setzer Deposition") at 18:2-11, 50:20-51:5, 75:4-13; December 2015 Setzer Deposition at 29:16-30:1.

³¹ See, for example, June 2016 Setzer Deposition at 6:17-12:5, Exhibit 17, Exhibit 20a; December 2015 Setzer Deposition at 171:8-16, Exhibit 16 at SEARS0002515; Means Deposition at 62:11-13.

³² June 2016 Setzer Deposition at 6:17-16:12, Exhibit 17. The agreement number associated with a given MPA consists of the customer number of the customer who purchased the MPA, followed by a five-digit agreement suffix. See June 2016 Setzer Deposition at 12:6-18.

³³ December 2015 Setzer Deposition at 171:8-16; Means Deposition at 62:11-15; June 2016 Setzer Deposition at 6:17-19:17, 40:4-15, 62:7-63:9, Exhibit 20a.

misconduct is a record of the products that were eligible for coverage under a Sears MPA at a given point in time during the Relevant Breach of Contract Period. One such source of this information is the Eligible Brands Lists, which contain information on the brands and types of products that are eligible for coverage under an MPA at a given point in time.³⁴ Eligible Brands Lists have been used by Sears to determine product eligibility for MPAs since at least 1996, prior to the start of the Relevant Breach of Contract Period, and are still currently in use.³⁵ As I previously discussed, from time to time, Sears revised its Eligible Brands List as certain brands were added or removed from eligibility for MPA coverage over time.³⁶ In addition, as I previously discussed, evidence indicates that prior versions of the Eligible Brands List have been “saved somewhere” by Sears, and that there is a way to determine the “revision date” of those documents.^{37,38}

19. In order to incorporate this information into my damages methodology, I would first take the information contained in all of the Eligible Brands Lists that were effective at any point during the Relevant Breach of Contract Period and create a database that, for every brand-product type combination (e.g. Maytag Refrigerator), includes any relevant start or end date(s) for aftermarket MPA coverage eligibility that may have occurred during the Relevant Breach of Contract Period (hereafter “BOC Eligible Brands Database”). As I discuss in more detail below, this BOC Eligible Brands Database could allow me to determine if a given product that was covered by an aftermarket MPA that was

³⁴ December 2015 Setzer Deposition at 152:20-155:20.

³⁵ December 2015 Setzer Deposition at 37:10-13, 142:14-143:8, 152:20-155:20.

³⁶ December 2015 Setzer Deposition at 153:16-154:15.

³⁷ December 2015 Setzer Deposition at 153:16-158:9.

³⁸ Earlier in this Expert Report, I discussed MMI, which is “merchandise brand qualification” that is incorporated into Cibooodle’s infrastructure that contains information on the brands and products that are covered under its MPAs. See December 2015 Setzer Deposition at 137:18-139:9 and Exhibit 10 at SEARS0003023. See, also, Means Deposition at 24:2-8. According to Mr. Setzer, the information contained in MMI matches the information contained on Sears’ Eligible Brand Lists. See December 2015 Setzer Deposition at 152:16-153:7. Therefore, the information included in MMI could potentially serve as an alternative source of information regarding eligible brands and product types for MPA coverage for the period for which MMI was being used by Sears.

purchased during the Relevant Breach of Contract Period was, in fact, eligible for coverage at the time of purchase.

20. Another piece of information that could be used to measure damages suffered by proposed Breach of Contract Class members as a result of the alleged misconduct is the price paid for each product covered by a given MPA. According to Mr. Setzer, the data warehouse can be queried to determine “how much Sears charged for a particular MPA.”³⁹ Mr. Setzer further testified that when a customer purchases an aftermarket MPA covering multiple products, the MPA is priced on a per-product basis.⁴⁰ Further, if customers wished to discuss the prices they were being charged for individual products covered under a single MPA, Mr. Setzer indicated that Sears sales representatives would have access to the information necessary to discuss these individual product prices with customers.⁴¹ This implies that individual product MPA pricing information is likely maintained internally by Sears in a database such as the data warehouse to enable Sears sales representatives to access such information in the event a customer wishes to discuss those prices.

21. However, in the event that prices for individual products covered by a single MPA are not available through the data warehouse, evidence I have reviewed indicates that this information can likely be obtained through other means. For instance, at deposition, Mr. Setzer described the process that Sears uses to price individual products that are covered by aftermarket MPAs.⁴² Mr. Setzer further testified that a record of “prices [...] for every single [...] type of product that could be covered” by an MPA is “stored and saved” by Sears.⁴³ Therefore, if information on the prices paid by customers for individual products covered by an

³⁹ December 2015 Setzer Deposition at 177:2-6.

⁴⁰ December 2015 Setzer Deposition at 84:16-19.

⁴¹ December 2015 Setzer Deposition at 84:20-85:3.

⁴² December 2015 Setzer Deposition at 82:5-83:12.

⁴³ December 2015 Setzer Deposition at 82:5-84:14. At her deposition, Ms. Means also discussed some of the details associated with how pricing is determined for individual products covered by an aftermarket MPA. She noted that the availability of information on prices that Sears charged for different types of products for MPA coverage was “all system.” See Means Deposition at 125:19-127:22.

MPA is not available through a query of the data warehouse or any other Sears database, then the aforementioned record of prices for product types based on Sears' pricing formula could likely be used to determine the individual product prices paid by customers associated with their MPAs.

22. Another piece of information that could be used to measure damages suffered by proposed Breach of Contract Class members as a result of the alleged misconduct is the refund amount, if any, that was issued by Sears for a given product that was covered by an aftermarket MPA during the Relevant Breach of Contract Period. According to Mr. Setzer, the Sears Legacy system can be queried to determine if a refund was issued on a particular MPA, as well as the amount and the date of any such refunds.⁴⁴ Further, evidence I have reviewed indicates that information on refunds issued by Sears for specific products covered by aftermarket MPAs is likely available through the Sears Legacy system.⁴⁵

23. Furthermore, I understand that prior to offering a refund, Sears offered customers replacement authorization credits for a certain dollar amount that customers could use to purchase a replacement item from Sears.⁴⁶ Evidence I have reviewed indicates that Sears maintains data on replacement authorizations for products included in customers' MPAs that were ultimately fulfilled by the customer.⁴⁷ Included in these data are information on the brand and type of product that is included in a given MPA for which a replacement authorization was approved by Sears and fulfilled by the customer.⁴⁸ Further, these data include information on the value of the replacement authorization credits Sears offered a customer for a given product, as well as the retail price of the Sears

⁴⁴ December 2015 Setzer Deposition at 179:15-180:2; June 2016 Setzer Deposition at 27:2-18, Exhibit 17.

⁴⁵ See, for example, December 2015 Setzer Deposition at 190:23-191:16. See, also, June 2016 Setzer Deposition at 6:17-8:22, 19:10-17, 62:7-63:5, Exhibit 17, Exhibit 20a.

⁴⁶ See, for example, SEARS0000397-0401 at 0398; SEARS0008724-743 at 735-736. At deposition, Mr. Setzer explained how the replacement authorization credit was determined. See June 2016 Setzer Deposition at 67:22-68:6.

⁴⁷ June 2016 Setzer Deposition at 56:2-57:13, Exhibit 20a.

⁴⁸ June 2016 Setzer Deposition at 62:7-63:9, Exhibit 20a.

product the customer opted to purchase as a replacement.⁴⁹ In addition, these data also include information on the “date that the replacement authorization value was given to the customer.”⁵⁰

24. As I discussed, evidence I have reviewed indicates that the data discussed above are likely maintained by Sears in the regular course of business, and could likely be used to measure damages suffered by proposed Breach of Contract Class members as a result of the alleged misconduct (if it is found to have taken place) without resorting to individualized inquiry. Should any additional information regarding these data be made available to me at a later stage of this litigation, I reserve the right to revise my opinions accordingly.

B. Methodology to measure damages suffered by proposed Breach of Contract Class members

25. Above I described the data and information likely maintained by Sears that could allow me to measure damages suffered by proposed Breach of Contract Class members as a result of the alleged misconduct without resorting to individualized inquiry. Here I describe the methodology I could implement using those data to measure damages suffered by members of the proposed Breach of Contract Class. This methodology would begin by creating an MPA dataset (“Master BOC MPA Dataset”) that includes the following fields of data discussed above: agreement number, MPA start date, MPA end date, MPA type (point-of-sale or aftermarket), customer name, customer address, customer number, product brand,⁵¹ product type, and price.⁵² The Master BOC MPA Dataset would then be

⁴⁹ June 2016 Setzer Deposition at 65:7-10, 67:11-68:6, Exhibit 20a; December 2015 Setzer Deposition at 36:14-37:3.

⁵⁰ June 2016 Setzer Deposition at 65:24-66:5.

⁵¹ I understand that, prior to the implementation of MMI into Ciboodle in March 2009, there were instances in which the brand associated with a given product covered by an aftermarket MPA was not recorded by the Sears sales representative, leaving this field blank in the data warehouse. According to Mr. Setzer, “the majority of coverage had a brand name listed because we would always ask, but it wasn’t as good as it is now because it wasn’t a required field.” See December 2015 Setzer Deposition at 142:14-143:24. I understand from Counsel for the Plaintiffs that it may be appropriate to include some or all of these products in my damages analysis. Should that be the case, my damages methodology would allow me to do so using reasonable assumptions where necessary. Should any additional information regarding missing product brand information

limited to aftermarket MPAs with start dates that occurred during the Relevant Breach of Contract Period (March 25, 2000 to the present).

26. Next, in order to identify the products in the Master BOC MPA Dataset that were included as part of an aftermarket MPA sold by Sears, yet were not covered by or eligible for coverage under the MPA, I would merge certain information from the BOC Eligible Brands Database (discussed above) onto the Master BOC MPA Dataset. Specifically, using the product type and product brand information included in both datasets, I would create two new fields of data in the Master BOC MPA Dataset: the start date and the end date during which a given product brand-type combination (e.g. Maytag Refrigerator) was included on Sears' Eligible Brands List. Once these two fields of data are merged onto the Master BOC MPA Dataset, I could run a query to determine if the MPA start date for a given product falls inside or outside of this eligible brands range of coverage for that product. Then, any MPA start dates that fall inside their corresponding eligible brands range of coverage will be eliminated from the Master BOC MPA Dataset.

27. The last step before calculating damages is to determine if Sears has issued any refunds or replacement authorization credits (that were fulfilled by the customer) in connection with any of the products that remain in the Master BOC MPA Database. I discussed the availability of such refund and replacement authorization credits above. Using the agreement number, product brand, and product type data fields, I would merge the dollar amount of any refund or replacement authorization credit (fulfilled by the customer) issued by Sears during the Relevant Breach of Contract Period for a given product covered by a given aftermarket MPA onto the Master BOC MPA Database. Once this information is

related to sales of aftermarket MPAs be made available to me at a later stage of this litigation, I reserve the right to revise my analysis accordingly.

⁵² In the Master BOC MPA Dataset, each individual product covered by an MPA would constitute its own observation (or row) of data in the database. For example, if a single MPA covered five different products, the data in the Master BOC MPA Dataset with respect to that MPA would constitute five separate observations.

merged, I would eliminate any observations for which a customer received a full refund (or equivalent replacement authorization credits) of the MPA price for a given product during the Relevant Breach of Contract Period from the Master BOC MPA Database.

28. Lastly, to calculate damages, I could simply subtract the refund or replacement authorization credit amounts (if any) associated with the remaining products in the Master BOC MPA Database from the MPA prices paid by customers for those products. Then, summing these differences across all products in the Master BOC MPA Database would yield damages suffered by members of the proposed Breach of Contract Class.

IV. Unjust Enrichment Claims

29. In addition to Plaintiffs' breach of contract claims, I have also been asked by Counsel for the Plaintiffs to analyze whether a standard and reliable methodology exists that could allow me to utilize data and information possessed by Sears to measure damages suffered by proposed Unjust Enrichment Class members as a result of the alleged misconduct (if it is found to have taken place) without resorting to individualized inquiry. Based on the materials I have reviewed to date, it is my opinion that such a methodology exists. I discuss this methodology in more detail below.

A. Availability of data

30. In Section III.A of this Expert Report I discussed a variety of data that are likely maintained by Sears that could be used to measure damages suffered by proposed Breach of Contract Class members as a result of the alleged misconduct (if it is found to have taken place) without resorting to individualized inquiry. This included the data contained in the Master BOC MPA Database, the BOC Eligible Brands Database, and additional data with respect to the dollar amount of any refund or replacement authorization credit (fulfilled by the customer) issued by Sears during the Relevant Breach of Contract Period for a given product covered by a given aftermarket MPA. It is my opinion that these data could likely

also be used to measure damages suffered by proposed Unjust Enrichment Class members as a result of the alleged misconduct (if it is found to have taken place) without resorting to individualized inquiry with one key difference, which I discuss in more detail below. Should any additional information regarding these data be made available to me at a later stage of this litigation, I reserve the right to revise my opinions accordingly.

B. Methodology to measure damages suffered by proposed Unjust Enrichment Class members

31. In Section III.B of this Expert Report, I described a methodology I could implement using data discussed in Section III.A to measure damages suffered by members of the proposed Breach of Contract Class. These data could likely also be used to measure damages suffered by proposed Unjust Enrichment Class members as a result of the alleged misconduct without resorting to individualized inquiry with one key difference. As I previously discussed, the Relevant Unjust Enrichment Period for the purposes of my analysis is March 25, 2005 to the present. In light of this later start date to the Relevant Unjust Enrichment Period as compared to the Relevant Breach of Contract Period, I would create alternate versions of the Master BOC MPA Database and the BOC Eligible Brands Database that are limited to the Relevant Unjust Enrichment Period, hereafter referred to as the "Master UE MPA Database" and the "UE Eligible Brands Database" respectively. My damages analysis could then proceed in the same manner I described above with respect to the Breach of Contract Class.

V. Consumer Fraud Claims

32. In addition to Plaintiffs' breach of contract and unjust enrichment claims, I have also been asked by Counsel for the Plaintiffs to analyze whether a standard and reliable methodology exists that could allow me to utilize data and information possessed by Sears to measure damages suffered by proposed Consumer Fraud Class members as a result of the alleged misconduct (if it is found to have taken place) without resorting to individualized inquiry in

connection with an alleged violation of Pennsylvania's Unfair Trade Practices and Consumer Protection Law. Based on the materials I have reviewed to date, it is my opinion that such a methodology exists. I discuss this methodology in more detail below.

A. Availability of data

33. In Section III.A of this Expert Report, I discussed a variety of data that are likely maintained by Sears that could be used to measure damages suffered by proposed Breach of Contract Class members as a result of the alleged misconduct (if it is found to have taken place) without resorting to individualized inquiry. This included the data contained in the Master BOC MPA Database, the BOC Eligible Brands Database, and additional data with respect to the dollar amount of any refund or replacement authorization credit (fulfilled by the customer) issued by Sears during the Relevant Breach of Contract Period for a given product covered by a given aftermarket MPA. It is my opinion that these data could likely also be used to measure damages suffered by proposed Consumer Fraud Class members as a result of the alleged misconduct (if it is found to have taken place) without resorting to individualized inquiry with two key differences, which I discuss in more detail below. Should any additional information regarding these data be made available to me at a later stage of this litigation, I reserve the right to revise my opinions accordingly.

B. Methodology to measure damages suffered by proposed Consumer Fraud Class members

34. In Section III.B of this Expert Report, I described a methodology I could implement using data discussed in Section III.A to measure damages suffered by members of the proposed Breach of Contract Class. These data could likely also be used to measure damages suffered by proposed Consumer Fraud Class members as a result of the alleged misconduct without resorting to individualized inquiry with two key differences. First, as I previously discussed, the Relevant Consumer Fraud Period for the purposes of my analysis is March 25, 2004 to the

present. In light of this later start date to the Relevant Consumer Fraud Period as compared to the Relevant Breach of Contract Period, I would create alternate versions of the Master BOC MPA Database and the BOC Eligible Brands Database that are limited to the Relevant Consumer Fraud Period, hereafter referred to as the "Master CF MPA Database" and the "CF Eligible Brands Database" respectively. In addition, as I previously discussed, the proposed Consumer Fraud Class is limited to residents of Pennsylvania. As such, as part of my damages analysis, I would also limit the Master CF MPA Database to residents of Pennsylvania using the customer address data field. My damages analysis could then proceed in the same manner I described above with respect to the Breach of Contract Class.⁵³

VI. Conclusions

35. Based on the materials I have reviewed to date, I have determined that a standard and reliable methodology exists that could allow me to utilize data and information likely possessed by Sears to measure damages suffered by members of the proposed Breach of Contract, Unjust Enrichment, and Consumer Fraud Classes during the Relevant Breach of Contract Period, Relevant Unjust Enrichment Period, and Relevant Consumer Fraud Period, respectively, as a result of the alleged misconduct (if it is found to have taken place) without resorting to individualized inquiry.



Christopher Jackman

July 28, 2017

⁵³ I understand from Counsel for the Plaintiffs that under Pennsylvania's Unfair Trade Practices and Consumer Protection Law, the Court may award damages up to three times the actual damages suffered by the Plaintiffs. Should the Court decide to do so, I could adjust my measurement of damages accordingly.

EXHIBIT 2

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

NINA GREENE and GERALD GREENE,)
Plaintiffs,)
-vs-) Case No.
SEARS PROTECTION Company,) 1:15-cv-02546
SEARS ROEBUCK and Co. and)
SEARS HOLDINGS Corporation,)
Defendants.)

ORAL DEPOSITION OF DAINON SETZER
CHICAGO, ILLINOIS
THURSDAY, DECEMBER 17, 2015

Reported by:

DEBORAH HABIAN, CSR, RMR, CRR, CLR,

JOB NO: 8903

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<p>1 (CONTINUING)</p> <p>2 PLAINTIFFS' EXHIBITS</p> <p>3 NUMBER DESCRIPTION PAGE</p> <p>4 Exhibit 15 Sears PA welcome letter to 212</p> <p>5 Nina Greene</p> <p>6 Bates Greene0150 - Greene0151</p> <p>7</p> <p>8 Exhibit 16 Case Ciboodle: Introduction 217</p> <p>9 Bates SEARS0002497 - SEARS0002617</p> <p>10</p> <p>11</p> <p>12 PREVIOUSLY MARKED PLAINTIFFS' EXHIBITS</p> <p>13 NUMBER DESCRIPTION PAGE</p> <p>14 Exhibit 1 Sears Agreement 198</p> <p>15 Bates SEARS0003969 - SEARS0003978</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>1 question before you give an answer and likewise,</p> <p>2 I will wait until you finish your answer before</p> <p>3 I start talking so that we have a clear record.</p> <p>4 Is that okay?</p> <p>5 A. Yes.</p> <p>6 Q. If I ask a question and you don't</p> <p>7 understand it, I'd ask that you tell me that,</p> <p>8 because if you just go ahead and answer, I will</p> <p>9 assume that you understood my question. Is that</p> <p>10 okay?</p> <p>11 A. Yes.</p> <p>12 Q. If you need to take a break at any</p> <p>13 time, just let me know. All I ask is that if</p> <p>14 there's a question pending when you want to take</p> <p>15 break, that you answer that question and then</p> <p>16 we'll go ahead and take a break.</p> <p>17 A. Okay.</p> <p>18 Q. Are you under the influence of any</p> <p>19 medications or drugs that would impair your</p> <p>20 ability to testify truthfully and completely?</p> <p>21 A. No.</p> <p>22 Q. What, if anything, did you do to</p> <p>23 prepare for your deposition today?</p> <p>24 A. Met with Leah and team a couple of</p>
Page 7	Page 9
<p>1 (Oath administered at 9:31 a.m. CST)</p> <p>2</p> <p>3 DAINON SETZER,</p> <p>4 called as a witness herein by the plaintiffs,</p> <p>5 having been first duly sworn, was examined and</p> <p>6 testified as follows:</p> <p>7 EXAMINATION</p> <p>8 BY MR. DEVITO:</p> <p>9 Q. Good morning, Mr. Setzer. My name is</p> <p>10 David Devito. I represent the plaintiffs, the</p> <p>11 Greenes, in this case. I'm just going to go</p> <p>12 over a few preliminary matters.</p> <p>13 I don't know whether you've -- well,</p> <p>14 here's the first question: Have you ever been</p> <p>15 deposed before?</p> <p>16 A. No, sir.</p> <p>17 Q. Okay. So you understand that you're</p> <p>18 under oath which means you have the obligation</p> <p>19 to tell the truth the same as if you were in</p> <p>20 court?</p> <p>21 A. Yes.</p> <p>22 Q. The court reporter sitting to my left</p> <p>23 is going to take down everything that's said</p> <p>24 here, so I'd ask that you allow me to finish my</p>	<p>1 times. Other than that, nothing.</p> <p>2 Q. How many times?</p> <p>3 A. Two in person.</p> <p>4 Q. And when did you do that?</p> <p>5 A. Yesterday afternoon and two Fridays</p> <p>6 ago. Without looking at a calendar, I'm not</p> <p>7 sure when that was.</p> <p>8 Q. And about how long did those meetings</p> <p>9 last?</p> <p>10 A. Two or three hours two Fridays ago and</p> <p>11 an hour yesterday.</p> <p>12 Q. Did you look at any documents during</p> <p>13 those meetings?</p> <p>14 MS. BRUNO: I'm going to caution the</p> <p>15 witness, that's a yes-or-no question.</p> <p>16 THE WITNESS: Yes.</p> <p>17 BY MR. DEVITO:</p> <p>18 Q. Could you tell me what those documents</p> <p>19 were?</p> <p>20 A. It was a variety of documents. I</p> <p>21 wouldn't be able to specify them. It was some</p> <p>22 things from that pile (indicating) and some</p> <p>23 things that I have provided to Leah and team</p> <p>24 from the Sears side, all things related to the</p>

3 (Pages 6 to 9)

<p style="text-align: right;">Page 10</p> <p>1 case.</p> <p>2 Q. Did you go over e-mail communications?</p> <p>3 MS. BRUNO: I'm going to caution the</p> <p>4 witness -- I think you're getting a little bit</p> <p>5 farther into attorney-client privileged</p> <p>6 information.</p> <p>7 MR. DEVITO: Well, I'm not asking him</p> <p>8 to tell me anything he said to you. I'm just</p> <p>9 asking whether he looked at e-mails.</p> <p>10 MS. BRUNO: You can answer that with a</p> <p>11 yes-or-no answer.</p> <p>12 THE WITNESS: Yes.</p> <p>13 BY MR. DEVITO:</p> <p>14 Q. I don't want you to tell me anything --</p> <p>15 any of your discussions with counsel.</p> <p>16 A. Okay.</p> <p>17 Q. If my question asks you -- you know,</p> <p>18 what you think your answer is requires you to</p> <p>19 divulge anything that you discussed with</p> <p>20 counsel, I don't want to hear that. She's</p> <p>21 correct in telling you not to tell me that.</p> <p>22 A. Okay.</p> <p>23 Q. Could we -- I'm just going to sort of</p> <p>24 do some background now, if you could tell me</p>	<p style="text-align: right;">Page 12</p> <p>1 promotion was in front of me, put school on</p> <p>2 hold, take the new job, get comfortable in the</p> <p>3 new job, and then get back to school in the new</p> <p>4 city.</p> <p>5 Q. So what was the job you had in Spokane?</p> <p>6 A. A variety of them. The final job after</p> <p>7 I moved out of Spokane was team manager, 20 call</p> <p>8 center representatives approximately reporting</p> <p>9 to me in an outbound sales environment.</p> <p>10 Q. Okay. So can you sort of explain to me</p> <p>11 what you mean by "outbound sales environment"?</p> <p>12 A. Oh, yeah. Outbound telemarketing call</p> <p>13 center, so we would call customers that had</p> <p>14 provided their information to Sears for the</p> <p>15 purpose of selling them new or renewing existing</p> <p>16 protection agreements.</p> <p>17 Q. Okay. So this is already -- even when</p> <p>18 you were in Spokane is sort of -- it's focused</p> <p>19 on sales of protection agreements; is that</p> <p>20 accurate?</p> <p>21 MS. BRUNO: Objection as to form.</p> <p>22 You can answer.</p> <p>23 THE WITNESS: You said "can" or</p> <p>24 "can't"?</p>
<p style="text-align: right;">Page 11</p> <p>1 what your educational background is?</p> <p>2 A. Went to a variety of colleges as I</p> <p>3 moved around with the company trying to work</p> <p>4 towards my bachelor's degree in business</p> <p>5 management, so community college in Spokane,</p> <p>6 then Texas A&M satellite campus in San Antonio</p> <p>7 and finally, a bachelor's degree from National</p> <p>8 Louis University out in Lisle.</p> <p>9 Q. And when did you get the bachelor's</p> <p>10 degree?</p> <p>11 A. Probably 2008.</p> <p>12 Q. And how long had you been attending</p> <p>13 these various colleges?</p> <p>14 A. Oh, off and on since 1996.</p> <p>15 Q. Okay. So it sounds like the</p> <p>16 educational history kind of is wrapped up with</p> <p>17 your employment history because you said you did</p> <p>18 it with Sears?</p> <p>19 A. Yeah, I started with Sears in Spokane,</p> <p>20 Washington, got my associate's degree there, was</p> <p>21 about to move to a four-year school in Spokane</p> <p>22 when a promotion opportunity to San Antonio came</p> <p>23 up, and the reason I was going to school was to</p> <p>24 expand my career possibilities so if the</p>	<p style="text-align: right;">Page 13</p> <p>1 MS. BRUNO: You can answer.</p> <p>2 THE WITNESS: Okay.</p> <p>3 Yes. It was the Spokane call center --</p> <p>4 as long as I've been with the company has been</p> <p>5 an outbound telemarketing office selling</p> <p>6 protection agreements.</p> <p>7 BY MR. DEVITO:</p> <p>8 Q. And so when you transferred to</p> <p>9 San Antonio, when did that happen?</p> <p>10 A. March of 2003.</p> <p>11 Q. Okay. And what did you -- what was</p> <p>12 your job there?</p> <p>13 A. Okay. The new position was sales</p> <p>14 manager, which would have been just one bump</p> <p>15 directly up the ladder, so had a group of four</p> <p>16 to eight team managers reporting to me, and that</p> <p>17 was an inbound protection agreement call center,</p> <p>18 so answering calls still in that same line of</p> <p>19 business, protection agreements, a variety of</p> <p>20 customer service, sales and cancellation</p> <p>21 requests.</p> <p>22 Q. "Inbound," meaning that the customers</p> <p>23 are calling in to Sears?</p> <p>24 A. Yes.</p>

4 (Pages 10 to 13)

<p style="text-align: right;">Page 14</p> <p>1 Q. And how long did you do that?</p> <p>2 A. March of '03 to May of '05.</p> <p>3 Q. And is that when you transferred to</p> <p>4 Chicago?</p> <p>5 A. Yes. Went to -- at the time we had a</p> <p>6 Naperville call center in home delivery. It was</p> <p>7 also inbound. I worked in that home delivery</p> <p>8 field for just over a year before moving to the</p> <p>9 Bridgeview call center, also here in</p> <p>10 Chicagoland, that is protection agreement</p> <p>11 office, so one year outside of the protection</p> <p>12 agreement line of business and then back --</p> <p>13 Q. Okay.</p> <p>14 A. -- back to PAs. And that was an</p> <p>15 outbound call center virtually identical in</p> <p>16 structure and certainly identical in business</p> <p>17 purpose as Spokane.</p> <p>18 Q. And how long did you stay in that role?</p> <p>19 A. Moved over there as a sales manager as</p> <p>20 well, so did that for a year from like -- '05?</p> <p>21 September of '06 to late 2007, then was the</p> <p>22 general manager of the Bridgeview call center,</p> <p>23 did that for two years before moving into a</p> <p>24 corporate role at headquarters.</p>	<p style="text-align: right;">Page 16</p> <p>1 different product offers to the customers.</p> <p>2 Q. And is that your current title?</p> <p>3 A. No. This summer, so July of 2015, I</p> <p>4 moved into national operations manager role.</p> <p>5 Q. And is that the only step in between</p> <p>6 manager of marketing and customer segmentation?</p> <p>7 A. Yeah. I was general manager in</p> <p>8 Bridgeview. Then I did manager of marketing</p> <p>9 customer segmentation for five-ish years and</p> <p>10 since this summer, I've been national operations</p> <p>11 manager.</p> <p>12 Q. So 2010 to 2015 or thereabout, late --</p> <p>13 perhaps late '09?</p> <p>14 A. Yeah, that would be a good close</p> <p>15 summary.</p> <p>16 Q. Okay.</p> <p>17 And could you just tell me now what you</p> <p>18 are doing as national operations manager?</p> <p>19 A. I work with, again, all the six call</p> <p>20 centers that we have in the protection agreement</p> <p>21 line of business on call center productivity and</p> <p>22 efficiency and maintaining things like safety</p> <p>23 teams and PCI compliance, payment card industry,</p> <p>24 protecting customer credit card information,</p>
<p style="text-align: right;">Page 15</p> <p>1 Q. So can you give me the year on that</p> <p>2 just --</p> <p>3 A. I'm trying to, yes. I'm trying to do</p> <p>4 the math here.</p> <p>5 Q. So was I.</p> <p>6 A. September '05, '06 was the year that --</p> <p>7 '07 -- 2000 -- late 2009. 2007 to 2009 would</p> <p>8 have been general manager, I think. I want a</p> <p>9 piece of paper to do that math to see if I'm</p> <p>10 working it out correctly.</p> <p>11 MS. BRUNO: You're doing just fine.</p> <p>12 MR. DEVITO: I don't think your lawyer</p> <p>13 wants you doing that.</p> <p>14 BY MR. DEVITO:</p> <p>15 Q. So when you took the corporate role at</p> <p>16 corporate headquarters when -- that was in '09?</p> <p>17 A. Late '09 or early '10.</p> <p>18 Q. And what was your title there?</p> <p>19 A. Then I became manager of marketing and</p> <p>20 customer segmentation. I would describe it in</p> <p>21 practice as more of a channel manager position,</p> <p>22 meaning I worked with both the inbound and</p> <p>23 outbound protection agreement call centers on</p> <p>24 sales initiatives and projects of bringing</p>	<p style="text-align: right;">Page 17</p> <p>1 those kind of things.</p> <p>2 Q. And what's the name of the entity that</p> <p>3 employs you?</p> <p>4 A. Sears Holdings Corporation, to the best</p> <p>5 of my knowledge. Over the years it's been Sears</p> <p>6 Protection Company or Sears and Roebuck, but I</p> <p>7 think my official W-2 says Sears Holdings</p> <p>8 Corporation.</p> <p>9 Q. And what is Sears Protection Company?</p> <p>10 A. That's a wholly-owned subsidiary under</p> <p>11 the Sears Holdings Corporation that is built for</p> <p>12 the -- as the obligor of protection agreements.</p> <p>13 Q. And that continues to today to be the</p> <p>14 case?</p> <p>15 A. Sears Protection Company?</p> <p>16 MS. BRUNO: Objection as to form.</p> <p>17 But you can answer if you know.</p> <p>18 THE WITNESS: Okay.</p> <p>19 Yes.</p> <p>20 BY MR. DEVITO:</p> <p>21 Q. What's Sears Home Services?</p> <p>22 MS. BRUNO: Objection as to form.</p> <p>23 You can answer if you know.</p> <p>24 THE WITNESS: It is the business unit</p>

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<p style="text-align: right;">Page 18</p> <p>1 that -- within the holding company, Home</p> <p>2 Services is the business unit that houses</p> <p>3 protection agreements and in-home repair, home</p> <p>4 improvement, parts direct. A lot of those after</p> <p>5 retail type interactions that customers would</p> <p>6 have with Sears exist under the Home Services</p> <p>7 business unit.</p> <p>8 BY MR. DEVITO:</p> <p>9 Q. So -- so it's business unit, not an</p> <p>10 entity; is that correct?</p> <p>11 A. To my knowledge, it's not set up as an</p> <p>12 entity, like a -- like, we have -- Sears</p> <p>13 Protection Company is, to my knowledge,</p> <p>14 registered as an operating business, because</p> <p>15 that's on the back and bottom of a</p> <p>16 certificate -- when we send a customer a</p> <p>17 confirmation of protection agreement, that's set</p> <p>18 up. I've never seen Sears Home Services as</p> <p>19 anything more than a business structure, but</p> <p>20 I've never been part of the finance team to</p> <p>21 fully understand that.</p> <p>22 MS. BRUNO: And I think this is a good</p> <p>23 point to put this on the record: Dainon is here</p> <p>24 as Sears 30(b)(6) witness on certain identified</p>	<p style="text-align: right;">Page 20</p> <p>1 A. Okay.</p> <p>2 Q. So with that in mind, do you supervise</p> <p>3 people in your current role?</p> <p>4 A. No.</p> <p>5 Q. So I believe you said that you work</p> <p>6 with six call centers; is that accurate?</p> <p>7 A. Yes.</p> <p>8 Q. And could you tell me approximately --</p> <p>9 well, just tell me how those are set up in terms</p> <p>10 of structure.</p> <p>11 MS. BRUNO: Objection as to form.</p> <p>12 But you can answer if you know.</p> <p>13 THE WITNESS: Four of them are set up</p> <p>14 as what we would call outbound telemarketing</p> <p>15 call centers and two are set up as inbound</p> <p>16 customer service/sales protection agreement call</p> <p>17 centers.</p> <p>18 BY MR. DEVITO:</p> <p>19 Q. And in terms of the people that work</p> <p>20 there, could you describe that for me, how it's</p> <p>21 structured in terms of management layers?</p> <p>22 A. Like a --</p> <p>23 MS. BRUNO: Objection as to form.</p> <p>24 But you can answer.</p>
<p style="text-align: right;">Page 19</p> <p>1 topics. The subject matter of the corporate</p> <p>2 structure for Sears and its affiliated entities</p> <p>3 is not a subject matter in which he's been</p> <p>4 identified as a 30(b)(6) witness. I'm going to</p> <p>5 let him answer the questions, that's fine, but I</p> <p>6 just want to be clear --</p> <p>7 MR. DEVITO: Okay.</p> <p>8 MS. BRUNO: -- that he's not Sears's</p> <p>9 witness on that subject matter.</p> <p>10 MR. DEVITO: Okay.</p> <p>11 BY MR. DEVITO:</p> <p>12 Q. The sale of protection agreements fits</p> <p>13 within the Sears Home Services business unit; is</p> <p>14 that right?</p> <p>15 MS. BRUNO: I'm going to object as to</p> <p>16 form.</p> <p>17 You can answer.</p> <p>18 THE WITNESS: Yes.</p> <p>19 BY MR. DEVITO:</p> <p>20 Q. So I guess I'd like you to focus,</p> <p>21 unless I say otherwise in my question, on the</p> <p>22 time when you were manager of marketing and</p> <p>23 customer segmentation rather than your current</p> <p>24 job.</p>	<p style="text-align: right;">Page 21</p> <p>1 THE WITNESS: Like an org chart?</p> <p>2 BY MR. DEVITO:</p> <p>3 Q. Yes.</p> <p>4 A. Okay. Each of the call centers has a</p> <p>5 general manager reporting to him or her, is</p> <p>6 typically two sales managers. One of our call</p> <p>7 centers is larger and has four. There's also an</p> <p>8 operations manager reporting to the general</p> <p>9 manager and then the -- there's some offshoots</p> <p>10 here and there, but the majority of the</p> <p>11 structure is general manager, a couple of sales</p> <p>12 managers.</p> <p>13 Each of those sales managers would have</p> <p>14 four to six on average team managers, and each</p> <p>15 of those team managers would have 18 to 20</p> <p>16 hourly associates on the phones making or</p> <p>17 receiving phone calls.</p> <p>18 Q. So do you know how many people work in</p> <p>19 that business unit?</p> <p>20 MS. BRUNO: Objection as to form.</p> <p>21 But you can answer if you know.</p> <p>22 THE WITNESS: My best guess today would</p> <p>23 be right around 500, between associates and</p> <p>24 managers in those six call centers, but I</p>

6 (Pages 18 to 21)

<p style="text-align: right;">Page 22</p> <p>1 haven't seen a -- didn't check a recent head 2 count in anticipation of this. 3 BY MR. DEVITO: 4 Q. I'll note for the record that it looked 5 like you were doing the math in your head. 6 A. Okay. 7 Q. So who is -- well, okay. Back up a 8 second. 9 When you were the manager of marketing 10 and customer segmentation, who was your boss? 11 A. Katerina Means, K-A-T-R-I-N-A, 12 M-E-A-NS. 13 Q. And what was her title? 14 A. Director of service contracts. 15 Q. Does she still work for Sears? 16 A. Yes. 17 Q. In that same role? 18 A. Yes. 19 (Exhibit 5 was marked for 20 ID.) 21 BY MR. DEVITO: 22 Q. You've been handed what's been marked 23 as Exhibit 5. Could you please just take a look 24 at that for me?</p>	<p style="text-align: right;">Page 24</p> <p>1 that the same thing? 2 A. It is. She's doing the exact role that 3 I had in the Sears intranet directory. She's 4 listed as manager of marketing and customer 5 segmentation. I think that's the HR job code. 6 In practice around the office and sharing org 7 charts like this with other teams, we -- you 8 know Katrina, myself, when I was in that role, 9 Demi used that channel manager because the 10 marketing part got confusing and people from the 11 actual marketing division, chief marketing 12 officer and down thought wait, should that 13 person be part of our team? And it's not really 14 a marketing role. So in practice and in 15 introducing that person around the office, we 16 use channel manager. 17 Q. Okay. And so the marketing division -- 18 there's a separate team that's responsible for 19 marketing even with respect to protection 20 agreements, for instance? 21 MS. BRUNO: Objection as to form. 22 You can answer if you understand. 23 THE WITNESS: I don't think I do. 24 There is a separate marketing team. The</p>
<p style="text-align: right;">Page 23</p> <p>1 A. Yes. I'm familiar with it. 2 Q. Okay. So could you just describe for 3 me what this represents? 4 A. This is an organizational chart of 5 Katrina and her team, which includes myself and 6 the -- kind of the rest of the product 7 management/product support team. 8 Q. So this is a current org chart? 9 A. (Reviewing document.) 10 All except for the TBD under Joe 11 Finley. Joe did fill that position. It's now 12 Marcus Gonzalez. But other than that, yes. 13 Q. Okay. And could you tell me where, if 14 anywhere, you would have been on this chart 15 before you became national operations manager? 16 A. Oh, that's easy. Under -- right under 17 Katrina is Demi Richardson. That would have 18 been my old role for that five years. When I 19 moved over to the national operations manager 20 role, Demi backfilled into my position, my 21 former position. 22 Q. Okay. There it says "Channel & 23 Customer Segmentation Manager" is that -- that's 24 a little different than what you told me. Is</p>	<p style="text-align: right;">Page 25</p> <p>1 responsibility -- help me understand that 2 question one more time, please. 3 BY MR. DEVITO: 4 Q. Sure. It was prompted by you saying 5 that the marketing part of that title was 6 somehow confusing to perhaps other people within 7 Sears who were responsible for marketing, and 8 I'm just trying to understand who that is -- you 9 know, who you're talking about there. 10 A. Okay. 11 MS. BRUNO: Is there a question 12 pending? What's the question pending? 13 BY MR. DEVITO: 14 Q. Could you please explain for me what 15 you meant when you referred to other marketing 16 people? 17 A. Okay. There is a separate line that 18 reports up through a chief marketing officer, 19 whereas Katrina would report up more through an 20 operational VP and, yeah, they will offer their 21 expertise and partner with Katrina and her team 22 on marketing tactics and best strategies and 23 those kind of things. 24 Q. With respect to the things that</p>

7 (Pages 22 to 25)

<p style="text-align: right;">Page 26</p> <p>1 Katrina's team does, including sales of 2 protection agreements? 3 A. Um... yes. 4 Q. So on this chart, below your name is a 5 block that says "SC Operation" and then I think 6 it's the No. 6 in parentheses and then "Team 7 Managers." Could you explain that? 8 A. Yes, the dotted line is because they do 9 not report to me. I'm not responsible for those 10 six operations team managers' performance, 11 annual reviews, even hiring, firing, you know, 12 job decisions, but as a subject matter expert 13 within the Sears organization, those – there's 14 one in each call center. 15 So when I was describing that general 16 manager, a couple of sales managers and also an 17 operations manager, each one of those report up 18 to the general manager on the site, but I work 19 with them as my point of contact for anything 20 operational going on in the call center, any 21 kind of initiative, local or line of 22 business-wide. 23 Q. So they report up to a general manager 24 at this particular call center?</p>	<p style="text-align: right;">Page 28</p> <p>1 are in a call center that has its own facilities 2 manager. All of them are responsible for things 3 like our PCI audit, that payment card industry 4 audit. 5 They are responsible for the local 6 resource management team, which would be a 7 small, typically two to six associates who 8 handle associates' scheduling time off requests, 9 shift trades, those type of things, and 10 maintaining the software called e-Workforce that 11 helps us manage who we have scheduled to work on 12 what day to either make phone calls out or 13 answer phone calls in for customers. 14 Also, the clerical and the audit teams 15 that would do some of our bookkeeping and those 16 kind of things at the local level would report 17 up through that operations team manager. 18 Q. So if you'd look at the sort of bottom 19 left of this chart, there's three boxes with 20 dotted lines around them. Could you explain 21 what these are to me? 22 A. Okay. The SPP-SF and KSP-SF stand for 23 Sears protection plan and Kmart smart plan. The 24 SF in both of those cases means sales floor.</p>
<p style="text-align: right;">Page 27</p> <p>1 A. Correct. 2 Q. But who do the managers of the call 3 center report to? 4 A. The general managers? 5 MS. BRUNO: Objection as to form. 6 But if you know, you can answer. 7 THE WITNESS: Okay. 8 The general managers report to Matt 9 Pennies, who is director of call center 10 operations. 11 BY MR. DEVITO: 12 Q. Could you spell that last name? 13 A. Yeah, P-E-N-N-I-E-S. 14 Q. And so I guess the opposite of the 15 dotted line, being the solid line, that means 16 that that -- the person connected by the solid 17 line is a direct report to the person above them 18 on this chart? 19 A. Correct. 20 Q. And those team managers that you work 21 with, what is it that they do? 22 A. They have a – it kind of depends on 23 the call center in particular. Some of them 24 serve in a facilities manager role, some of them</p>	<p style="text-align: right;">Page 29</p> <p>1 Those are a couple of products we sell in the 2 Sears and Kmart respectively. They are 3 replacement-type products, so smaller 4 non-repairable merchandise that we sell. 5 For example, the SPP, a cordless drill 6 wouldn't be considered reparable, but we offer 7 the extended warranty at point of sale. And so 8 a customer buys the extra coverage. If the 9 drill breaks, they return the drill. We give 10 them a gift card or check to make them whole so 11 they can replace their product. 12 The sales floor means we only sell that 13 product on the sales floor with the new 14 merchandise being sold. It's not offered in the 15 aftermarket post-purchase and it's not renewed. 16 Q. And what do you mean when you say 17 "aftermarket"? 18 A. From the moment the customer leaves the 19 store with the product, that moment on becomes 20 the aftermarket. So in my world, we have retail 21 in the store shopping for a piece of 22 merchandise. They've gone home with the 23 product. If there's going to be a relationship 24 with that customer, it would roll into the</p>

8 (Pages 26 to 29)

<p style="text-align: right;">Page 30</p> <p>1 aftermarket business.</p> <p>2 Q. Okay. Meaning that a -- you won't sell</p> <p>3 a protection agreement that covers it other than</p> <p>4 at the point of purchase in the store; is that</p> <p>5 right?</p> <p>6 MS. BRUNO: Objection as to form.</p> <p>7 You can answer if you understand.</p> <p>8 THE WITNESS: Okay.</p> <p>9 Yeah, there's no merchandise that Sears</p> <p>10 sells that would be SPP or PA eligible. It</p> <p>11 would be one or the other.</p> <p>12 BY MR. DEVITO:</p> <p>13 Q. Oh.</p> <p>14 A. It's either a small non-repairable item</p> <p>15 or it's a repairable item so we would offer a</p> <p>16 protection agreement. It's a business decision</p> <p>17 which product we offer -- which protection</p> <p>18 coverage we offer, not a customer decision.</p> <p>19 Q. Okay. So that's a different product?</p> <p>20 A. Yes. Then do you want me to move over?</p> <p>21 Q. Well, sure.</p> <p>22 A. Okay.</p> <p>23 Q. And maybe am I -- what's the point of</p> <p>24 having this information on here? Can you tell</p>	<p style="text-align: right;">Page 32</p> <p>1 The relationship would be the first</p> <p>2 three managers from left to right are</p> <p>3 responsible in order for the first three dotted</p> <p>4 line boxes down below. So the vertical</p> <p>5 formatting gets a little out of alignment, but</p> <p>6 Jackie has the SPP and the KSP. Ashly has</p> <p>7 responsibility for the MPA, RPA and EWA and that</p> <p>8 open position TBD product manager, when filled</p> <p>9 will have responsibility for the balance, home</p> <p>10 warranty and down.</p> <p>11 Q. Okay. Thank you. So that if I'm</p> <p>12 understanding this now correctly, the SF/AM</p> <p>13 stands for sales floor/aftermarket; is that</p> <p>14 right?</p> <p>15 A. Yes.</p> <p>16 Q. So then if you move over to the blue</p> <p>17 box that's on the bottom right, it says "Team</p> <p>18 responsible for Service Contracts: Product</p> <p>19 Development," when it says "team" there, is that</p> <p>20 referring to the people listed on this chart?</p> <p>21 MS. BRUNO: Objection as to form.</p> <p>22 You can answer if you know.</p> <p>23 THE WITNESS: (Reviewing document.)</p> <p>24 Yes.</p>
<p style="text-align: right;">Page 31</p> <p>1 me that?</p> <p>2 MS. BRUNO: Objection as to form.</p> <p>3 BY MR. DEVITO:</p> <p>4 Q. Is this describing --</p> <p>5 MS. BRUNO: But go ahead.</p> <p>6 MR. DEVITO: Sorry.</p> <p>7 BY MR. DEVITO:</p> <p>8 Q. Is this describing the various things</p> <p>9 that the people on this chart are responsible</p> <p>10 for?</p> <p>11 A. Yes.</p> <p>12 Q. Okay.</p> <p>13 A. So it's Jackie Kfoury is responsible</p> <p>14 for the SPP and the KSP.</p> <p>15 Q. And how -- can you tell that just by</p> <p>16 looking at the chart or you know that?</p> <p>17 A. I know that just from internal business</p> <p>18 knowledge.</p> <p>19 Q. It has nothing to do with the fact that</p> <p>20 that's like underneath of her name?</p> <p>21 A. Unfortunately, no. It wasn't laid out</p> <p>22 that well because it would imply that -- well,</p> <p>23 actually, I'm sorry. Let me take -- let me take</p> <p>24 a closer look. (Reviewing document.)</p>	<p style="text-align: right;">Page 33</p> <p>1 BY MR. DEVITO:</p> <p>2 Q. And so then there's a number of things</p> <p>3 listed below that, "Product pricing, legal and</p> <p>4 regulatory requirements, contacts/offers and</p> <p>5 member experience."</p> <p>6 Which of those things, if any, do you</p> <p>7 have responsibility for?</p> <p>8 A. Am I still in my old role, marketing</p> <p>9 manager?</p> <p>10 Q. Yes.</p> <p>11 A. Okay. Contacts/offers, um... yep,</p> <p>12 that's it.</p> <p>13 Q. And then below that it says "Call</p> <p>14 center." Is someone on this chart responsible</p> <p>15 for call center?</p> <p>16 A. Specific to those bullet points, yes.</p> <p>17 The applications, campaign, Kathy Earl. Sales</p> <p>18 development, Veronica DeHerrera. Call center</p> <p>19 policy and procedures, the new me,</p> <p>20 post-marketing manager.</p> <p>21 Q. Okay.</p> <p>22 A. And the operations process improvement,</p> <p>23 me as well. Applications/campaign would also be</p> <p>24 Joe Finley along with Kathy Earl.</p>

<p style="text-align: right;">Page 34</p> <p>1 Q. And before you became national 2 operations manager, who was that? Who had that 3 job? 4 A. There were two of us at one time, Kevin 5 Warrix and myself. Kevin Warrix is no longer 6 with the company, but the person that I 7 backfilled the position for was Frank Kern, 8 K-E-R-N. 9 Q. So I'm just slightly confused now by 10 the history of how that happened. Could you 11 flesh this out for me? 12 A. At one point it was Frank and Kern -- 13 I'm sorry -- Frank and Kevin. Frank moved into 14 a new role. I took Frank's old job with Kevin. 15 And then Kevin was no longer with the company, 16 so it was just me. So it was two marketing 17 managers. Then there were one. 18 Q. And that all happened this year? 19 A. 2010. 20 Q. The year you took the job you -- 21 just -- okay. The easiest way to ask this is 22 probably for me to say: Tell me when those 23 changes occurred. 24 A. 2010 is when I replaced Frank, and then</p>	<p style="text-align: right;">Page 36</p> <p>1 THE WITNESS: Okay. 2 BY MR. DEVITO: 3 Q. So I do need to clear that up a little 4 bit. 5 Talking about 2010, when you took the 6 job, there were two people sharing that role; is 7 that right? 8 A. Yes. 9 Q. You and who? 10 A. Kevin Warrix. 11 Q. And could you spell that? 12 A. Kevin, K-E-V-I-N, Warrix, W-A-R-R-I-X. 13 Q. Okay. And then Kevin left; is that 14 right? 15 A. Yes. 16 Q. When? 17 A. Summer of 2010. 18 Q. Then Frank Kern comes in; is that 19 right? 20 A. No. 21 Q. Okay. Oh, he was there with Kevin 22 before? 23 A. Yes. 24 Q. You filled in for Frank?</p>
<p style="text-align: right;">Page 35</p> <p>1 later in '2010 is when Kevin left the company. 2 Q. Okay. Now I'm even more confused 3 because I thought we were -- 4 MS. BRUNO: You were asking questions 5 about his prior role. 6 MR. DEVITO: Okay. Then I guess I was 7 asking questions about his prior role, but then 8 I asked after he told me that he's now the 9 person in charge of these two items within call 10 center as the national operations -- I'm sorry, 11 we're just getting confused about what time 12 period we're talking about. 13 THE WITNESS: '10 or '15. 14 BY MR. DEVITO: 15 Q. I thought we were talking about -- now 16 about '15, but you're talking about '10? 17 A. I was. 18 MS. BRUNO: Just wait for him to ask 19 the question and that way we're not going to get 20 things confused. 21 THE WITNESS: Okay. 22 MS. BRUNO: Don't try to anticipate his 23 question. Just wait for him to ask the question 24 and it will go smoother.</p>	<p style="text-align: right;">Page 37</p> <p>1 A. Yes. 2 Q. Okay. Now I got it. Thank you. 3 All right. So could you describe for 4 me what an MPA is? 5 A. It stands for Master Protection 6 Agreement. It is a service contract that we 7 offer -- Sears offers in the retail and 8 aftermarket environment on reparable 9 merchandise. 10 Q. How long have you been working with 11 MPAs? 12 A. Since I started with the company in 13 1996. 14 Q. Do you know how long Sears has been 15 selling MPAs? 16 A. I think since the '50s. 17 Q. And -- 18 A. The naming convention has changed over 19 time but the heart of the product since at least 20 the '50s. 21 Q. And so going to your job in 2010, what 22 were your responsibilities with respect to MPAs? 23 A. The how and when, we would offer master 24 protection agreements in inbound and outbound</p>

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<p style="text-align: right;">Page 38</p> <p>1 calls and which types of customer groups we 2 would target for direct mail and telemarketing 3 efforts. 4 Q. As to the latter component of that, the 5 direct marketing, could you give me a little 6 more detail on what you did with respect to 7 that? 8 MS. BRUNO: Objection as to form. 9 But you can answer. 10 THE WITNESS: Direct mail we would -- 11 again, using that same list of customers that 12 have shopped at Sears, used a Sears service 13 technician, we would send them offer letters 14 saying you can buy coverage, you can renew 15 coverage, you can bundle coverage together to 16 get a better rate, and we would send out, you 17 know, thousands of letters through a printing 18 press and customers could respond by calling an 19 800 number or by tearing off the bottom coupon 20 or, you know, the bottom, almost like credit 21 card statement and mailing it back to us to 22 purchase. 23 BY MR. DEVITO: 24 Q. And what were you doing with respect to</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. I've handed you what's been marked as 2 Exhibit 6. If you look at the bottom of page 2 3 and then going on to page 3, you'll see your 4 name and then a listing of things on which you 5 have information. And I'm just -- I want to ask 6 about the first one of those, which says 7 "...issues relating to post-point-of-purchase 8 service agreement sales and marketing." 9 Could you explain what 10 post-point-of-purchase means there? 11 MS. BRUNO: Objection as to form. 12 Mr. Setzer didn't write that. So if you want to 13 ask him what post-point-of-purchase service is, 14 that's fine, but I don't think it's appropriate 15 to ask him what -- 16 MR. DEVITO: Okay. That's fair. 17 BY MR. DEVITO: 18 Q. Not what post -- not what it means 19 there but what it means to you. 20 MS. BRUNO: That's fine. 21 THE WITNESS: That would be synonymous 22 to aftermarket to me, meaning not a retail 23 purchased protection agreement. That's 24 something purchased after the customer's left</p>
<p style="text-align: right;">Page 39</p> <p>1 those activities? 2 A. We used deciles, which is an internal 3 term that we would use, to say based on scoring 4 of customers that we think are most likely to 5 buy based on existing purchase history, strength 6 of relationship with Sears, how far down the 7 list should we go so that it was profitable from 8 the sales versus expense ratio, the layout and 9 form of the letter, how big do we put the 10 toll-free number on there so customers call in 11 instead of mail it back, what's our opening 12 line, kind of the physical design and layout of 13 the outer envelope, the offer letter, the 14 business reply envelope, everything involved. 15 Q. Other than MPAs, what other products 16 are you -- or were you responsible for, 17 2010/2015? 18 A. The MPA; the repair protection 19 agreement or RPA; the basic PA, BPA; the value 20 protection agreement, the VPA; and to a lesser 21 degree, the A&E RPA. 22 (Exhibit 6 was marked for 23 ID.) 24 BY MR. DEVITO:</p>	<p style="text-align: right;">Page 41</p> <p>1 the store. 2 BY MR. DEVITO: 3 Q. Okay. So when you say "retail," that 4 means someone buying something in a store? 5 A. A brick and mortar store or Sears.com 6 and adding the protection agreement to the total 7 purchase of the refrigerator, for example. So 8 yes, I want that refrigerator and I want a 9 three-year or a five-year Master Protection 10 Agreement with it. In the store or online, they 11 can add that right in and it would show up as 12 one charge on their credit card statement. 13 If they decline that coverage at point 14 of sale, meaning when they bought the physical 15 product, then post-point-of-purchase would be 16 the next world aftermarket reference. 17 Q. Okay. If they buy it in the store 18 along with the refrigerator, can they add the 19 other products in their house to the MPA while 20 they're in the store? 21 A. No. 22 Q. How could they do that? How can that 23 be done, if it can be done? 24 MS. BRUNO: Objection as to form.</p>

11 (Pages 38 to 41)

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1 But you can answer.

2 THE WITNESS: For the customer to
3 initiate that, they would have to call one of
4 our inbound call centers using a toll-free
5 number.

6 BY MR. DEVITO:

7 Q. Okay. And correct me if I'm wrong, but
8 when you're making outbound sales calls, some
9 of -- at least some of that activity is calling
10 people who have purchased a product in a store
11 and perhaps bought an MPA that covers that
12 product, and you're attempting to sell them on
13 other products in their -- an MPA that covers
14 other products in their house; is that correct?

15 MS. BRUNO: I'm just going to object to
16 form.

17 But you can answer.

18 THE WITNESS: Potentially, yes.

19 BY MR. DEVITO:

20 Q. That sort of sale that I've just
21 hypothesized to you, the selling of an MPA that
22 covers other products in the customer's home, is
23 that always then going to be a
24 post-point-of-purchase sale from your

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1 call center. They could have been selected for
2 marketing either through outbound telemarketing
3 or by receiving some sort of direct mail or more
4 recently e-mail correspondence offering them
5 coverage, or the service technicians can, in
6 certain circumstances, offer protection
7 agreement coverage while they're out in the home
8 working on that or some other item.

9 Q. When you say "brick and mortar," that
10 obviously is a Sears store. What else could it
11 be?

12 A. Anywhere we sell -- Sears sells
13 reparable merchandise that's
14 protection-agreement eligible, so a Sears
15 outlet, a Sears hometown store. Sometimes the
16 Sears product and repair services centers will
17 have inventory, Kmart stocks, some merchandise
18 that's protection-agreement eligible. So
19 there's -- it's a large corporation. There's
20 lots of retail formats.

21 Q. Is that all of them or there could be
22 others --

23 A. Oh, I'm --

24 Q. -- that you're not remembering?

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1 perspective?

2 MS. BRUNO: Objection as to form.

3 But if you understand, you can answer.

4 THE WITNESS: Let me have the question
5 one more time, please.

6 BY MR. DEVITO:

7 Q. If a customer is going to purchase an
8 MPA that covers products in their house that
9 they didn't necessarily buy from Sears, is that
10 always going to be a post-point-of-purchase
11 sale?

12 A. Yes.

13 Q. Can you describe for me in general
14 terms what an MPA covers?

15 A. The -- it covers repairs, parts and
16 labor up to and including replacement of the
17 product from -- due to damages caused from
18 normal wear and tear under standard usage
19 conditions.

20 Q. We went over a little bit of this, I
21 think, but what are the ways in which customers
22 can purchase MPAs?

23 A. Point of sale, which could be brick and
24 mortar or dot com. They can call an inbound

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1 A. I'm confident there are others. I just
2 can't --

3 Q. Okay.

4 A. I've never worked on the retail side of
5 the business, so I'm -- I wouldn't be able to
6 give you an exhaustive list.

7 Q. You said, I think, more recently
8 customers have been solicited via e-mail; is
9 that correct?

10 A. Yes.

11 Q. When did you start doing that?

12 A. Early 2015. March-ish if you have an
13 "ish" on that keyboard.

14 Q. It's probably becoming increasingly
15 popular.

16 A. Probably.

17 Q. Do you know -- and if you don't,
18 obviously just tell me that -- any sort of
19 general breakdown as to how, by percentage, MPAs
20 are sold by Sears, in which channel?

21 MS. BRUNO: I'm just going to object as
22 to form.

23 But if you understand, you can answer.

24 THE WITNESS: About half are sold in

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<p style="text-align: right;">Page 46</p> <p>1 retail in point of sale, and about half are sold</p> <p>2 in some sort of aftermarket.</p> <p>3 BY MR. DEVITO:</p> <p>4 Q. When is the customer required to pay</p> <p>5 for the MPA?</p> <p>6 A. At time of purchase.</p> <p>7 Q. So in the post-point-of-purchase world,</p> <p>8 is that typically the customer gives a credit</p> <p>9 card either online or over the phone?</p> <p>10 A. Yes. Some pay with a check.</p> <p>11 Q. You'll accept checks over the phone</p> <p>12 or --</p> <p>13 A. Yeah, we have a check-by-phone process</p> <p>14 and -- or some of them mail it back with their</p> <p>15 direct mail coupon, mail a physical check back</p> <p>16 to us.</p> <p>17 Q. And in the cases where they don't pay</p> <p>18 immediately, I guess you bill them or they --</p> <p>19 at -- I'm sorry, this isn't a very good</p> <p>20 question, but if they're paying by physical</p> <p>21 check, you've basically made the sale and then</p> <p>22 they have to pay for it; is that accurate?</p> <p>23 MS. BRUNO: Objection as to form.</p> <p>24 But if you understand, you can answer.</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. Yes.</p> <p>2 A. Yes. It's always limited -- I'm paying</p> <p>3 for that product and I want to add a protection</p> <p>4 agreement on to that product. It's always that</p> <p>5 product that I'm buying, that I'm eligible to</p> <p>6 buy coverage on. Point of sale has no</p> <p>7 visibility to other merchandise that the</p> <p>8 customer my own.</p> <p>9 Q. So it's only the product being</p> <p>10 purchased that that MPA could cover?</p> <p>11 A. Yeah.</p> <p>12 Q. So now sort of focusing on</p> <p>13 post-point-of-purchase, if a customer wants to</p> <p>14 add products that they already own to an MPA,</p> <p>15 how can that get communicated to Sears? How can</p> <p>16 the products that they want to add get</p> <p>17 communicated to Sears?</p> <p>18 A. By telephone, if I understand the</p> <p>19 question correctly.</p> <p>20 Q. Is that the only way?</p> <p>21 A. No. Technicians can record additional</p> <p>22 coverage while they're in the home.</p> <p>23 Q. How about online?</p> <p>24 A. We do not currently have an aftermarket</p>
<p style="text-align: right;">Page 47</p> <p>1 THE WITNESS: I would describe it as</p> <p>2 we've offered them coverage and their contract</p> <p>3 would go into force and become effective when we</p> <p>4 receive the check.</p> <p>5 BY MR. DEVITO:</p> <p>6 Q. Better at answering that question than</p> <p>7 I was asking it.</p> <p>8 A. Okay.</p> <p>9 Q. The coverage wouldn't become effective</p> <p>10 until you received the check; is that right?</p> <p>11 A. Correct. We would create an agreement</p> <p>12 number either when we've obtained the credit</p> <p>13 card or have received the physical check or ran</p> <p>14 the check by phone. That's when we would record</p> <p>15 an agreement on behalf of the customer.</p> <p>16 Q. So the -- when a customer purchases an</p> <p>17 MPA at point of purchase, is that always limited</p> <p>18 to a product that they are at the same time</p> <p>19 purchasing in a Sears store?</p> <p>20 MS. BRUNO: Object as to form.</p> <p>21 But you can answer if you know.</p> <p>22 THE WITNESS: We're talking point of</p> <p>23 sale?</p> <p>24 BY MR. DEVITO:</p>	<p style="text-align: right;">Page 49</p> <p>1 online presence, no.</p> <p>2 Q. Okay. So in order do that, the</p> <p>3 customer has to actually speak to someone,</p> <p>4 either the technician in their house or a Sears</p> <p>5 representative by telephone; is that right?</p> <p>6 A. Yes.</p> <p>7 Q. And when they do that, what kind of</p> <p>8 product information does the customer have to</p> <p>9 give to Sears?</p> <p>10 MS. BRUNO: I'm just going to object to</p> <p>11 form.</p> <p>12 But if you understand the question, you</p> <p>13 can answer.</p> <p>14 THE WITNESS: Are we talking telephone</p> <p>15 or technician?</p> <p>16 BY MR. DEVITO:</p> <p>17 Q. Well, I'd like both answers. So let's</p> <p>18 start with telephone.</p> <p>19 A. Okay. We would ask the customer for a</p> <p>20 description of the merchandise. So, for</p> <p>21 example, if it's a refrigerator, we would ask</p> <p>22 some clarifying questions, like, does it have an</p> <p>23 ice maker, is it side-by-side or is it one of</p> <p>24 newer style trios with the French doors on top</p>

13 (Pages 46 to 49)

<p style="text-align: right;">Page 50</p> <p>1 so that we could select the most appropriate</p> <p>2 merchandise code.</p> <p>3 We would ask the customer for the age</p> <p>4 of the product, we would ask the customer for</p> <p>5 the brand name, and we would ask the customer if</p> <p>6 it is in good working order and located at their</p> <p>7 residence.</p> <p>8 Q. Do you ask them for a particular model?</p> <p>9 A. We do not require it. We have the</p> <p>10 fields to record model and serial number, but we</p> <p>11 do not require the customer to provide us model</p> <p>12 and serial over the telephone to sell a</p> <p>13 protection agreement.</p> <p>14 Q. Do you know why you don't require --</p> <p>15 A. In our --</p> <p>16 MS. BRUNO: Model? In the question,</p> <p>17 model?</p> <p>18 MR. DEVITO: Model, yes.</p> <p>19 THE WITNESS: In my experience, it's</p> <p>20 not a customer-friendly question to ask. Lots</p> <p>21 of consumers don't know where the model number</p> <p>22 tag would be located on a furnace or a water</p> <p>23 heater and it's -- it's not a requirement of us</p> <p>24 being able to successfully fulfill the contract.</p>	<p style="text-align: right;">Page 52</p> <p>1 volunteers it; is that right?</p> <p>2 A. Yes.</p> <p>3 Q. Now, in these types of sales, the</p> <p>4 post-point-of-purchase sales of MPAs, I take it</p> <p>5 that the customer doesn't need to purchase any</p> <p>6 of the products from Sears in order for them to</p> <p>7 be covered; is that right?</p> <p>8 A. It varies by product.</p> <p>9 Q. Okay. Can you explain further?</p> <p>10 A. For the majority of products, the</p> <p>11 common things, washers, driers, refrigerators,</p> <p>12 we don't care where you bought those. There are</p> <p>13 a few smaller divisions like computers, and I</p> <p>14 don't think anybody still makes them anymore,</p> <p>15 but rear projection TVs were a business</p> <p>16 requirement, that those had been bought at Sears</p> <p>17 for us to offer you protection agreement</p> <p>18 coverage. Lawn and garden equipment, which is a</p> <p>19 repair protection agreement -- we've been</p> <p>20 talking mostly about master protection</p> <p>21 agreements but --</p> <p>22 MS. BRUNO: I assume you only want</p> <p>23 Master Protection Agreement information, right?</p> <p>24 THE WITNESS: Oh.</p>
<p style="text-align: right;">Page 51</p> <p>1 If we have the right age and brand name</p> <p>2 and product description to know what it is that</p> <p>3 we're talking about, we're confident that we'll</p> <p>4 be able to repair it. So we don't need the</p> <p>5 model and serial at point of sale -- I'm mixing</p> <p>6 terms. I'm sorry. "Point of sale" means</p> <p>7 retail -- at the time of recording the</p> <p>8 agreement.</p> <p>9 BY MR. DEVITO:</p> <p>10 Q. And in terms of the -- requesting the</p> <p>11 age of the product, do you just rely on the</p> <p>12 customer to tell you how old it is; is that</p> <p>13 right?</p> <p>14 A. Over the telephone? Yes.</p> <p>15 Q. So I take it from your prior testimony</p> <p>16 that the -- you don't require the customer to</p> <p>17 give you the serial number; is that right?</p> <p>18 A. No, we do not. If a customer has it</p> <p>19 available, we have the fields in Ciboodle to</p> <p>20 record it, so we'll note the model and/or serial</p> <p>21 during that telephone conversation, but it's not</p> <p>22 a required field to continue like merchandise</p> <p>23 code, brand name and age.</p> <p>24 Q. So you'll get it if the customer</p>	<p style="text-align: right;">Page 53</p> <p>1 MR. DEVITO: I do, yeah. I don't want</p> <p>2 to cut you off, but if your attorney feels</p> <p>3 comfortable doing that, let's --</p> <p>4 MS. BRUNO: No. I don't want to be</p> <p>5 interrupting things, but this case is about</p> <p>6 MPAs. So I assume you're only interested in</p> <p>7 information about MPAs.</p> <p>8 MR. DEVITO: I am.</p> <p>9 BY MR. DEVITO:</p> <p>10 Q. How would Sears go about determining</p> <p>11 whether or not the customer bought the item at</p> <p>12 Sears?</p> <p>13 A. We would ask the customer.</p> <p>14 Q. And you would just take their word for</p> <p>15 it, whether or not they bought it at Sears?</p> <p>16 A. Yeah.</p> <p>17 Q. Does the product have to be something</p> <p>18 that Sears carries?</p> <p>19 A. No.</p> <p>20 Q. Does Sears confirm that the customer</p> <p>21 actually owns the specific product that they're</p> <p>22 seeking coverage for?</p> <p>23 MS. BRUNO: I'm going to just object to</p> <p>24 form.</p>

<p style="text-align: right;">Page 54</p> <p>1 But you can answer if you understand.</p> <p>2 THE WITNESS: No, we don't.</p> <p>3 BY MR. DEVITO:</p> <p>4 Q. And does Sears make any effort to</p> <p>5 inspect products or otherwise see what condition</p> <p>6 they're in?</p> <p>7 A. During that phone call?</p> <p>8 Q. Or subsequent to the phone call.</p> <p>9 A. Not a stand-alone inspection, no.</p> <p>10 Q. And not as a condition of selling the</p> <p>11 MPA?</p> <p>12 A. Correct, not as a condition of selling.</p> <p>13 MS. BRUNO: David, if you're going to a</p> <p>14 different area, want to take a break?</p> <p>15 MR. DEVITO: Yeah.</p> <p>16 MS. BRUNO: Because we've been going</p> <p>17 about an hour.</p> <p>18 MR. DEVITO: Sure. That's fine.</p> <p>19 (Recess taken from 10:30 a.m.</p> <p>20 to 10:37 a.m.)</p> <p>21 (Exhibit 7 was marked for</p> <p>22 ID.)</p> <p>23 BY MR. DEVITO:</p> <p>24 Q. Mr. Setzer, we're back on the record.</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. So when you say "up to five years," I</p> <p>2 assume that means that there are exceptions to</p> <p>3 the five-year limit; is that right?</p> <p>4 A. Yes.</p> <p>5 Q. What are those?</p> <p>6 A. We offer coverage in one, two, three,</p> <p>7 four and five-year increments.</p> <p>8 Q. It's not a product-specific exception?</p> <p>9 A. Correct.</p> <p>10 Q. So the duration of the coverage is</p> <p>11 something that's selected by the customer; is</p> <p>12 that right?</p> <p>13 A. Yes.</p> <p>14 Q. Below that and at the bottom there, it</p> <p>15 says "Maximum repair/replace liability, no</p> <p>16 maximum." What's your understanding of what</p> <p>17 that means?</p> <p>18 A. That if we are going to replace a</p> <p>19 product because it is deemed un-repairable or</p> <p>20 uneconomical to repair by our technician and</p> <p>21 team, that we do a feature-for-feature match-up</p> <p>22 of the product to give the customer a new</p> <p>23 product that's as close to the product they</p> <p>24 currently have and it's being replaced if</p>
<p style="text-align: right;">Page 55</p> <p>1 You've been handed what's been marked as</p> <p>2 Exhibit 7. Are you familiar with this document?</p> <p>3 A. Yes.</p> <p>4 Q. At the bottom there, where it says</p> <p>5 "Multiple years of coverage available" and then</p> <p>6 it says "up to five years on most products,"</p> <p>7 what's your understanding of what that means?</p> <p>8 A. That on any given day, we would sell a</p> <p>9 customer a Master Protection Agreement up to</p> <p>10 five years in duration. So it would cover you</p> <p>11 from today until December, whatever today is, of</p> <p>12 2020.</p> <p>13 Q. And that would be regardless of the age</p> <p>14 of the products that are being covered?</p> <p>15 A. Yes.</p> <p>16 Q. So it's just five years from when --</p> <p>17 the date when the MPA is sold; is that right?</p> <p>18 A. Up to, yes.</p> <p>19 Q. And does that mean that coverage then</p> <p>20 terminates on those products five years from the</p> <p>21 date of the sale of the MPA?</p> <p>22 A. It means that contract expires.</p> <p>23 Q. But it could be renewed?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 57</p> <p>1 possible regardless of the current retail -- you</p> <p>2 know, the MSRP, the retail selling price of that</p> <p>3 replacement product.</p> <p>4 Q. Will the replacement product always be</p> <p>5 something that is sold by Sears?</p> <p>6 A. Yes.</p> <p>7 Q. So even if Sears is -- even if the MPA</p> <p>8 covers a product that Sears doesn't sell and</p> <p>9 it's determined that that product needs to be</p> <p>10 replaced, it will be replaced with a product</p> <p>11 that Sears does sell; is that right?</p> <p>12 A. I don't understand the question.</p> <p>13 Q. So -- well, is it possible for Sears to</p> <p>14 have sold an MPA that covers a product that</p> <p>15 wasn't purchased at Sears and which Sears does</p> <p>16 not sell?</p> <p>17 A. We don't sell that brand name?</p> <p>18 Q. For instance, yes.</p> <p>19 A. Yes.</p> <p>20 Q. But then the customer calls for service</p> <p>21 on that product and it's determined that the</p> <p>22 product needs to be replaced. What I think</p> <p>23 you're telling me is that the product will</p> <p>24 necessarily be replaced with a product that</p>

<p style="text-align: right;">Page 58</p> <p>1 Sears does sell; is that right?</p> <p>2 A. A replacement product, yes.</p> <p>3 MS. BRUNO: Objection as to form.</p> <p>4 But you can answer if you understand.</p> <p>5 BY MR. DEVITO:</p> <p>6 Q. And so when we're talking about here</p> <p>7 this "maximum repair/replace liability," if the</p> <p>8 product is covered by the MPA and -- does this</p> <p>9 mean that the customer should always get either</p> <p>10 a repair or a replacement --</p> <p>11 MS. BRUNO: Objection.</p> <p>12 BY MR. DEVITO:</p> <p>13 Q. -- under the MPA?</p> <p>14 MS. BRUNO: Objection as to form.</p> <p>15 You can answer.</p> <p>16 THE WITNESS: If it's a covered repair,</p> <p>17 yes.</p> <p>18 BY MR. DEVITO:</p> <p>19 Q. Okay. So unless it's a noncovered</p> <p>20 repair, then the customer should always get</p> <p>21 either a repair or a replacement; is that right?</p> <p>22 A. Yes.</p> <p>23 Q. Are there situations in which Sears,</p> <p>24 rather than either repairing or replacing the</p>	<p style="text-align: right;">Page 60</p> <p>1 BY MR. DEVITO:</p> <p>2 Q. Okay. Are you aware of any situations</p> <p>3 that don't fit that scenario where Sears, for</p> <p>4 instance, just says "We're going to give you</p> <p>5 your money back"?</p> <p>6 MS. BRUNO: Object as to form.</p> <p>7 But you can answer if you know.</p> <p>8 THE WITNESS: I don't think I</p> <p>9 understand the question. I'm sorry.</p> <p>10 BY MR. DEVITO:</p> <p>11 Q. So I guess it sounds like what you're</p> <p>12 telling me is there's either a repair -- well,</p> <p>13 okay. I don't want to be imprecise.</p> <p>14 If the repair is covered or the product</p> <p>15 is covered --</p> <p>16 A. Okay.</p> <p>17 Q. -- the customer will always receive</p> <p>18 either a repair or a replacement authorization;</p> <p>19 is that right?</p> <p>20 MS. BRUNO: Object as to form,</p> <p>21 misstates the prior testimony.</p> <p>22 BY MR. DEVITO:</p> <p>23 Q. Well, if you think my question</p> <p>24 misstates your testimony, then please correct</p>
<p style="text-align: right;">Page 59</p> <p>1 product, would just issue the customer a refund</p> <p>2 for its MPA?</p> <p>3 A. Yes.</p> <p>4 Q. And why would that happen?</p> <p>5 A. The "why" is a tough one, but the most</p> <p>6 common reason would be the customer elects to</p> <p>7 select -- to opt for a refund of their</p> <p>8 protection agreement rather than having us</p> <p>9 replace it.</p> <p>10 Q. So is it always a customer-driven</p> <p>11 decision?</p> <p>12 A. The --</p> <p>13 MS. BRUNO: Objection as to form.</p> <p>14 But you can answer.</p> <p>15 THE WITNESS: In my experience, it</p> <p>16 would be we offer the replacement authorization</p> <p>17 and yeah, the only reason it would be canceled</p> <p>18 after that instead of replaced is if that's what</p> <p>19 the customer chose to do. There's probably been</p> <p>20 exceptions to that scenario, but under normal</p> <p>21 business practices, yes, it's we offer to</p> <p>22 replace it and if they don't want the</p> <p>23 replacement item, they can say "forget it,</p> <p>24 cancel it and give me my money back."</p>	<p style="text-align: right;">Page 61</p> <p>1 it.</p> <p>2 A. If it is a covered repair on a covered</p> <p>3 product, then our resolution would be either a</p> <p>4 repair or a replacement authorization or a</p> <p>5 buy-out offer or a cancellation and refund.</p> <p>6 Q. Okay. So those other two scenarios</p> <p>7 that you just brought up, buy-out offer and</p> <p>8 cancellation and refund, could you explain those</p> <p>9 for me?</p> <p>10 A. A buy-out offer is when we don't have</p> <p>11 the ability to repair the product and we're</p> <p>12 offering the customer a cash settlement in lieu</p> <p>13 of repair or replace, and the cancellation is</p> <p>14 what we talked about earlier, where the</p> <p>15 customer, according to the terms and conditions</p> <p>16 of the protection agreement, have the option to</p> <p>17 say: Never mind, I don't like your replacement</p> <p>18 option, I'd rather just have my money back that</p> <p>19 I gave you for the protection agreement.</p> <p>20 Q. And why would a buy-out offer arise?</p> <p>21 MS. BRUNO: Objection as to form.</p> <p>22 But you can answer.</p> <p>23 THE WITNESS: There's probably lots of</p> <p>24 scenarios and situations that would ultimately</p>

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<p style="text-align: right;">Page 62</p> <p>1 get there, but the most common would be we don't</p> <p>2 have -- Sears doesn't have the availability of</p> <p>3 parts or technical information to repair a</p> <p>4 product and we've been unsuccessful in locating</p> <p>5 a third-party service provider in that</p> <p>6 customer's market to repair it on behalf of</p> <p>7 Sears Home Services.</p> <p>8 BY MR. DEVITO:</p> <p>9 Q. Okay. But then explain to me why the</p> <p>10 next step wouldn't be to replace.</p> <p>11 MS. BRUNO: Object to form.</p> <p>12 But you can answer.</p> <p>13 THE WITNESS: In -- typically, the</p> <p>14 customer wouldn't want what we have in store.</p> <p>15 BY MR. DEVITO:</p> <p>16 Q. Because the customer has told you that?</p> <p>17 A. I'm speaking generally. I -- "the</p> <p>18 customer," but yeah, that's been our experience,</p> <p>19 is that they don't -- maybe it's a built-in</p> <p>20 refrigerator and we don't sell those, so they</p> <p>21 would go to a retailer that sells built-in</p> <p>22 refrigerators.</p> <p>23 Q. But you will sell MPAs that cover</p> <p>24 built-in refrigerators, right?</p>	<p style="text-align: right;">Page 64</p> <p>1 where it says "Covered vs. Not Covered" --</p> <p>2 A. Um-hum.</p> <p>3 Q. -- it gives a definition of "not</p> <p>4 covered." That says it means that "...the</p> <p>5 customer must pay for the repair/service. It</p> <p>6 does not mean that Sears should cancel the PA,</p> <p>7 however." And then --</p> <p>8 MS. BRUNO: David, I'm sorry to</p> <p>9 interrupt. You can you tell me where you are?</p> <p>10 Do you know where he is?</p> <p>11 MR. DEVITO: There is, very close to</p> <p>12 the top of the page, "Covered vs. Not Covered."</p> <p>13 One sentence in to there, it says "By 'not</p> <p>14 covered,' we simply mean that the customer must</p> <p>15 pay for the repair/service."</p> <p>16 MS. BRUNO: Okay. Sorry. You threw me</p> <p>17 off when you said "definition."</p> <p>18 THE WITNESS: I was down to the grid.</p> <p>19 MS. BRUNO: Sorry. I didn't mean to</p> <p>20 interrupt.</p> <p>21 MR. DEVITO: No problem.</p> <p>22 BY MR. DEVITO:</p> <p>23 Q. And then after it gives that</p> <p>24 definition, the document goes on to identify in</p>
<p style="text-align: right;">Page 63</p> <p>1 A. In some situations, yes.</p> <p>2 Q. Do you know why Sears sells MPAs that</p> <p>3 cover things like built-in refrigerators that</p> <p>4 they don't sell?</p> <p>5 A. No.</p> <p>6 (Exhibit 8 was marked for</p> <p>7 ID.)</p> <p>8 BY MR. DEVITO:</p> <p>9 Q. So you've been handed what's been</p> <p>10 marked as Exhibit 8. Are you familiar with this</p> <p>11 document?</p> <p>12 A. Yes.</p> <p>13 Q. Where did this document come from?</p> <p>14 A. The Sears intranet. PA Resource Center</p> <p>15 is the name of the page.</p> <p>16 Q. And what does this document show?</p> <p>17 MS. BRUNO: Objection as to form.</p> <p>18 You can answer.</p> <p>19 THE WITNESS: We refer to it as our</p> <p>20 covered/not covered grid. So it would show some</p> <p>21 examples of things that are covered and not</p> <p>22 covered by agreement type.</p> <p>23 BY MR. DEVITO:</p> <p>24 Q. So if you look at the first page under</p>	<p style="text-align: right;">Page 65</p> <p>1 the grid things that are not covered under</p> <p>2 various types of PAs including MPAs; is that</p> <p>3 right?</p> <p>4 A. Yes.</p> <p>5 Q. So just to take the first one as an</p> <p>6 example, the issue being "PM Check," and I</p> <p>7 believe that means preventative maintenance</p> <p>8 check; is that right?</p> <p>9 A. Yes.</p> <p>10 Q. And so if the customer wants more than</p> <p>11 one preventative maintenance check a year, they</p> <p>12 have to pay for it, right?</p> <p>13 A. Yes.</p> <p>14 Q. Does this document list all the things</p> <p>15 that are not covered under an MPA?</p> <p>16 A. (Reviewing document.)</p> <p>17 It seems to, yes.</p> <p>18 Q. So unless something is listed here as</p> <p>19 not covered, it should be covered, right?</p> <p>20 MS. BRUNO: Objection as to form.</p> <p>21 But you can answer.</p> <p>22 THE WITNESS: In my experience, yes.</p> <p>23 BY MR. DEVITO:</p> <p>24 Q. Can --</p>

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<p style="text-align: right;">Page 66</p> <p>1 A. I'm trying to think of an example of 2 something that came up, and I don't see it on -- 3 I can't come up with one that is missing from 4 this list. 5 Q. You cannot think of anything that's not 6 listed here but should be? 7 A. Correct. 8 Q. So back to where I was reading from 9 previously on the first page, it says that if 10 something is not covered, that "does not mean 11 that Sears should cancel the PA, however. There 12 are only a few circumstances where Sears may 13 cancel a PA." 14 Are you familiar with the reasons why 15 Sears may cancel a PA -- an MPA? 16 A. Yes. 17 Q. What are they? 18 A. Some examples could include an unsafe 19 condition for the technician, so, for example, a 20 customer that has dogs and the customer refuses 21 to secure the dogs in a bedroom or the backyard 22 so the technician can safely work on the 23 product. We've had customers who were 24 threatening towards our technicians in the past.</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. Could you tell me what it is? 2 MS. BRUNO: Before you answer, just for 3 clarity of the record, could we just put the 4 Bates number of this one on? 5 MR. DEVITO: Oh, sure. 6 MS. BRUNO: Yeah. 7 MR. DEVITO: That's been Bates-labeled 8 as SEARS 410 through 414. 9 THE WITNESS: Am I supposed to know 10 what that means? Is that supposed to mean 11 anything to me? 12 MS. BRUNO: No. No. 13 THE WITNESS: Oh, okay. 14 (Discussion off the record.) 15 THE WITNESS: This is a printout of the 16 terms and conditions for the Master Protection 17 Agreement. 18 BY MR. DEVITO: 19 Q. And if you'd look at the bottom left, 20 it says "National MPA AM E Jan2010." 21 I think I know the answer, but can you 22 tell me what those letters mean? 23 A. MPA, Master Protection Agreement; 24 aftermarket -- AM is aftermarket; E for English,</p>
<p style="text-align: right;">Page 67</p> <p>1 So we would say we -- we're going to cancel your 2 protection agreement because we're unwilling to 3 send our technician back out there and put him 4 or her in harm's way for the sake of your 5 refrigerator. 6 We would also cancel protection 7 agreements if, on our first repair attempt, the 8 product was determined not to be in good working 9 order when the agreement was purchased, the age 10 was not correct or the model and serial is 11 illegible on the tag. 12 Q. And how would Sears go about 13 determining, for example, that the product 14 wasn't in good working order when the MPA was 15 sold? 16 A. The expertise of the technician and 17 oftentimes conversation with the customer. 18 (Exhibit 9 was marked for 19 ID.) 20 BY MR. DEVITO: 21 Q. You've been handed what's been marked 22 as Exhibit 9. Are you familiar with this 23 document? 24 A. Yes.</p>	<p style="text-align: right;">Page 69</p> <p>1 and Jan2010 for the revision date. 2 Q. And do you happen to know -- well, how 3 often does this get revised? 4 MS. BRUNO: Objection as to form. 5 You can answer if you understand. 6 THE WITNESS: As needed. 7 BY MR. DEVITO: 8 Q. Do you know how often -- how many 9 revisions have been made since, say, 10 January 2010? 11 A. I think two, but I'm not positive. I 12 think April of '13 and September '15, 13 thereabouts. 14 Q. Were you involved in revisions -- 15 making the revisions to this agreement? 16 A. To this one? 17 Q. Well, to any of the MPAs. Let's start 18 there. 19 A. Yes. 20 Q. What did you do in terms of giving 21 input on revisions to the MPA? 22 A. It was a team of people and we would 23 talk about what we thought we should cover or 24 not cover or include to be the -- what we feel</p>

18 (Pages 66 to 69)

<p style="text-align: right;">Page 70</p> <p>1 is the leader in the marketplace for</p> <p>2 comprehensive coverage.</p> <p>3 Q. And what time frame are we talking</p> <p>4 about?</p> <p>5 A. I was involved in the April '13 and</p> <p>6 September -- again, please don't quote me on</p> <p>7 these dates, but for the sake of references, the</p> <p>8 revisions and the September of '15 discussions.</p> <p>9 Q. And what discussions did you give in</p> <p>10 terms of making changes to the form?</p> <p>11 MS. BRUNO: Objection as to form.</p> <p>12 If you understand the question, you can</p> <p>13 answer.</p> <p>14 THE WITNESS: (Reviewing document.)</p> <p>15 The January 2010 terms and conditions,</p> <p>16 for example, have a food loss reimbursement of</p> <p>17 \$250 per year. The current terms and conditions</p> <p>18 offer \$250 in food loss per service incident</p> <p>19 regardless of frequency of breakdowns per year.</p> <p>20 BY MR. DEVITO:</p> <p>21 Q. And that's one of the things you</p> <p>22 suggested changing?</p> <p>23 A. Yes.</p> <p>24 MS. BRUNO: Objection as to form.</p>	<p style="text-align: right;">Page 72</p> <p>1 out or something. I'm not close -- that's a</p> <p>2 separate line of business within our business</p> <p>3 unit that I'm not directly knowledgeable of.</p> <p>4 BY MR. DEVITO:</p> <p>5 Q. So you don't know whether Sears has</p> <p>6 third-party people going out on service calls?</p> <p>7 A. I don't know.</p> <p>8 Q. But generally speaking, would you say</p> <p>9 that the majority of service calls are made by</p> <p>10 people employed by Sears?</p> <p>11 A. The majority, yes, generally speaking,</p> <p>12 yes.</p> <p>13 Q. And so in this scenario, this</p> <p>14 cancellation scenario where someone from Sears</p> <p>15 Repair has determined that it cannot service or</p> <p>16 repair a covered product, is that referring to a</p> <p>17 situation where a person has actually gone out</p> <p>18 to the customer's house and looked at the item</p> <p>19 or items that they're asking for service on?</p> <p>20 MS. BRUNO: Objection as to form.</p> <p>21 You can answer.</p> <p>22 THE WITNESS: Generally, yes. There</p> <p>23 are some products that are shop serviced. So</p> <p>24 they would have brought them to us. But some</p>
<p style="text-align: right;">Page 71</p> <p>1 THE WITNESS: Oh, sorry.</p> <p>2 MS. BRUNO: You can answer. His answer</p> <p>3 can stand.</p> <p>4 BY MR. DEVITO:</p> <p>5 Q. Now, if you go to the third page and</p> <p>6 look at Section 14, it's entitled "Cancellation</p> <p>7 and Refunds." It says "This section describes</p> <p>8 all the reasons why Sears can cancel an MPA."</p> <p>9 A. Yes.</p> <p>10 Q. And so one of those reasons listed in</p> <p>11 there is Sears may cancel the MPA "if Sears'</p> <p>12 Repair or its representatives determines that it</p> <p>13 cannot service or repair your covered products."</p> <p>14 Who's being referred to there as "Sears</p> <p>15 Repair"?</p> <p>16 A. The team of in-home technicians that</p> <p>17 Sears employs.</p> <p>18 Q. So those people are all Sears</p> <p>19 employees?</p> <p>20 MS. BRUNO: Objection as to form.</p> <p>21 But you can answer.</p> <p>22 THE WITNESS: I don't know. To -- the</p> <p>23 majority of them are in my experience, yes, but</p> <p>24 there could be markets where we've contracted</p>	<p style="text-align: right;">Page 73</p> <p>1 sort of Sears Repair representative would have</p> <p>2 looked at the item.</p> <p>3 BY MR. DEVITO:</p> <p>4 Q. Are those the only scenarios that you</p> <p>5 can think of that would fit into that scenario</p> <p>6 of Sears Repair or its representatives</p> <p>7 determining that it cannot service or repair a</p> <p>8 covered product?</p> <p>9 A. I'm sorry, I don't --</p> <p>10 Q. Meaning that other than having a Sears</p> <p>11 Repair employee go to the person's house and</p> <p>12 make the assessment that it can't be repaired,</p> <p>13 or having the customer bring the product into a</p> <p>14 physical location, a Sears store or whatever, is</p> <p>15 there any other way that Sears could cancel</p> <p>16 under that provision?</p> <p>17 MS. BRUNO: Paragraph 14 or the</p> <p>18 sentence?</p> <p>19 MR. DEVITO: The sentence about Sears</p> <p>20 Repair or its representatives determining it</p> <p>21 "cannot service or repair your covered product."</p> <p>22 THE WITNESS: May I recap the question</p> <p>23 back to him to see if I understand or should I</p> <p>24 ask for clarification?</p>

19 (Pages 70 to 73)

<p style="text-align: right;">Page 74</p> <p>1 MS. BRUNO: Don't you -- why don't you</p> <p>2 ask for clarification.</p> <p>3 BY MR. DEVITO:</p> <p>4 Q. So is it possible, for example, that</p> <p>5 cancellation could be done under this sentence</p> <p>6 here by telephone? The customer calls and says,</p> <p>7 "I want service on this," and someone on the</p> <p>8 phone makes an assessment that the thing can't</p> <p>9 be repaired. Is that possible?</p> <p>10 A. I've never heard of that situation</p> <p>11 happening, no.</p> <p>12 Q. Now, it uses the word "cannot service</p> <p>13 or repair" -- the words "cannot service or</p> <p>14 repair."</p> <p>15 Does that mean that the product</p> <p>16 literally cannot be serviced or repaired?</p> <p>17 A. My understanding of that context is</p> <p>18 that if Sears Repair cannot because of lack of</p> <p>19 technical information or available parts.</p> <p>20 Q. That doesn't include a scenario where,</p> <p>21 for example, it's not cost effective to repair</p> <p>22 an item?</p> <p>23 A. That we would cancel an agreement?</p> <p>24 Q. Yes.</p>	<p style="text-align: right;">Page 76</p> <p>1 A. On a covered product, correct.</p> <p>2 Q. So in that situation, they'd have to</p> <p>3 provide a replacement product; is that right?</p> <p>4 A. We would -- we would provide a</p> <p>5 replacement authorization, yes. It's up to the</p> <p>6 customer to fulfill.</p> <p>7 Q. I think we discussed some possible</p> <p>8 scenarios under this earlier, but other than the</p> <p>9 two things listed here, unavailability of</p> <p>10 functional parts and unavailability of technical</p> <p>11 information, what are the other reasons why</p> <p>12 Sears might determine it cannot service an item</p> <p>13 and therefore it would cancel?</p> <p>14 A. Um... remote location. There have been</p> <p>15 instances where a customer lives in one of those</p> <p>16 places you have to fly a seaplane to in Alaska</p> <p>17 to get to their cabin. We're not going to put a</p> <p>18 technician on a plane to come service your</p> <p>19 refrigerator. So if somehow they had bought</p> <p>20 coverage and moved that product there, we would</p> <p>21 offer them a cancellation because we're not</p> <p>22 going to be able to go there to service it, for</p> <p>23 example.</p> <p>24 Q. Okay. In the situation you just</p>
<p style="text-align: right;">Page 75</p> <p>1 A. Not to my knowledge, no.</p> <p>2 Q. Can you flip back to the protection</p> <p>3 agreement's coverage grid? I'm not -- I didn't</p> <p>4 mark mine as to what number is.</p> <p>5 A. ??</p> <p>6 Q. ?? That what we're looking at?</p> <p>7 MS. BRUNO: Yes.</p> <p>8 THE WITNESS: Okay.</p> <p>9 BY MR. DEVITO:</p> <p>10 Q. On there it says, in the left-hand</p> <p>11 column, "Product replacement" in bold there, and</p> <p>12 it says "Product replacement is covered if</p> <p>13 repair cannot be completed due to unavailability</p> <p>14 of functional parts or technical information."</p> <p>15 So are those two reasons given there,</p> <p>16 unavailability of functional parts and</p> <p>17 unavailability of technical information, the</p> <p>18 only -- let me strike that question. I've got</p> <p>19 to make sure I understand it first.</p> <p>20 Okay. So if a repair can't be</p> <p>21 completed because of either, 1, unavailability</p> <p>22 of functional parts, or 2, unavailability of</p> <p>23 technical information, that's not a reason why</p> <p>24 Sears can cancel an MPA, right?</p>	<p style="text-align: right;">Page 77</p> <p>1 described, would that be a situation where --</p> <p>2 A. Or even --</p> <p>3 Q. -- where the customer had moved during</p> <p>4 the duration of the MPA?</p> <p>5 A. Potentially. If they moved out of</p> <p>6 country.</p> <p>7 Q. But is it possible that they just lived</p> <p>8 in a remote location and bought an MPA?</p> <p>9 MS. BRUNO: I'm just going to object as</p> <p>10 to form.</p> <p>11 But if you're following, you can</p> <p>12 answer.</p> <p>13 THE WITNESS: It's possible.</p> <p>14 BY MR. DEVITO:</p> <p>15 Q. Do you know whether that's ever</p> <p>16 happened?</p> <p>17 A. I don't know of a specific example.</p> <p>18 Q. Now, you described earlier what I might</p> <p>19 call sort of crazy customer scenarios, where</p> <p>20 they won't lock the dogs up or they're</p> <p>21 threatening a technician.</p> <p>22 A. Okay.</p> <p>23 Q. Can you think of other -- any other</p> <p>24 reasons why Sears might determine it can't</p>

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1 service an item other than the ones you've
2 described?

3 **A. If the product is no longer accessible**
4 **and the customer's unwilling to resolve that, so**
5 **the furnace has been drywalled in and would**
6 **require the demolition of building material to**
7 **get to the furnace to repair it, we're going to**
8 **say we can't cover that unless -- if you would**
9 **like to remove that wall, we'll be happy to fix**
10 **it, but otherwise, we're going to have to**
11 **decline to repair it because we're not going to**
12 **be responsible for the reconstruction of that**
13 **wall that you built after the furnace was**
14 **installed. That would be another example.**

15 Q. So I think we marked this as 8, the
16 document that says "Service Fulfillment:
17 In-Home Providing Service" at the top?

18 **A. The covered/not covered?**

19 Q. Yes.

20 **A. Yeah, that's 8.**

21 Q. Okay. If you could turn back to that,
22 please.

23 **A. Okay.**

24 Q. If Sears decides something is not

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1 **have the noncovered repair resolved to get their**
2 **product back up and running and the contract**
3 **stays in force.**

4 Q. Does Sears give the customer a written
5 explanation of why it believes the repair isn't
6 covered?

7 MS. BRUNO: Objection as to form.

8 THE WITNESS: Not to my knowledge.

9 BY MR. DEVITO:

10 Q. So Sears -- I'm trying to get a sense
11 of how this unfolds. The technician says: I
12 think this thing is screwed up because you
13 failed to follow the owner's manual guidelines
14 and so we're not going to repair it.

15 Is that all that has -- and then the
16 customer just has to live with that; is that
17 fair?

18 MS. BRUNO: I'm just going to object to
19 form.

20 You can answer.

21 THE WITNESS: The majority of the
22 cases, it -- yeah, it's a conversation. It's
23 the lint trap on your dryer has a quilt in there
24 because you've never cleaned out the lint trap

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1 covered for one of the reasons listed there,
2 what does it do?

3 MS. BRUNO: Objection as to form.

4 BY MR. DEVITO:

5 Q. With the customer, what does it do --
6 what does it tell the customer?

7 MS. BRUNO: Objection as to form.

8 But you can answer.

9 THE WITNESS: I think it depends on
10 what is not covered.

11 BY MR. DEVITO:

12 Q. Okay. Well --

13 **A. Could I have a more specific --**

14 Q. Well, let's take No. 8, for example, on
15 the second page, "Owner Negligence."

16 **A. Okay.**

17 Q. If Sears has determined that the repair
18 isn't covered due to owner negligence, what does
19 it -- what does it do?

20 **A. "It" being Sears?**

21 Q. Sears, yeah.

22 **A. We would -- in most instances, we would**
23 **provide a paid repair estimate to the customer**
24 **so that the customer could pay out of pocket to**

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1 and so that caused this chain of events and this
2 malfunction with the dryer. The technician will
3 quite literally coach the customer on the proper
4 way to care for that dryer, recycle, clean out
5 the lint trap. So to fix whatever has gone
6 wrong as a result of that lint trap being, you
7 know, overly full, here's what it would cost and
8 then your protection agreement remains in force,
9 of course.

10 But I don't know of ever -- I don't
11 know that I've ever seen any kind of, you know,
12 printout or tear-off that we would hand the
13 customer to explain that.

14 BY MR. DEVITO:

15 Q. And that kind of a determination is
16 made by the technician?

17 MS. BRUNO: I'm just going to object to
18 form.

19 But you can answer.

20 BY MR. DEVITO:

21 Q. The determination that the repair is
22 not covered due to, for example, owner
23 negligence, that determination would be made by
24 the repair technician?

21 (Pages 78 to 81)

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1 A. Yes.

2 Q. So I want to ask you a few questions
3 about the pricing of MPAs.

4 A. Okay.

5 Q. How does Sears determine what it
6 charges for an MPA?

7 A. There's a variety of factors involved.

8 It would be -- on point-of-sale protection
9 agreements, we would consider the purchase price
10 of a product, we would consider the competitors
11 in the marketplace, and we would price it at a
12 spot that we feel makes us the most -- most
13 profit, the balance between a high margin on a
14 few contracts and a low margin on lots of
15 contracts and try to pick that sweet spot that
16 gives the company the best returns.

17 Q. And how about for post-point of sale?

18 A. Almost identical with the exception of
19 the ratio of PA price to merchandise price.
20 Electronics, for example, change in price very
21 quickly. You know, a 40-inch TV was really
22 expensive when they were new. Now you can buy
23 them at 7-Eleven. So the retail price means
24 less in the aftermarket. We look at what our --

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1 what the rest of the marketplace is doing so we
2 can remain competitive and try to find that
3 balance between volume and margin.

4 Q. Is the age of the product taken into
5 account?

6 A. Yes.

7 Q. Is the cost of the repairs for a
8 particular product taken into account?

9 A. Yes.

10 Q. Is the cost of a replacement product
11 taken into account?

12 A. Yes.

13 Q. And is there a written list or matrix
14 that sets out the prices?

15 MS. BRUNO: Objection as to form.

16 You can answer.

17 THE WITNESS: Not that's accessible to
18 the average -- certainly not to the associates.
19 There is no price list for the call center
20 agents and not even one that's readily available
21 to most of the team. It's stored in a, you
22 know, software program that looks at the
23 variables that determine pricing and returns it
24 for that particular customer's quote.

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1 BY MR. DEVITO:

2 Q. But the prices exists somewhere --

3 A. Yes.

4 Q. -- for every single --

5 A. Sorry.

6 Q. -- type of product that could be
7 covered?

8 A. Yes.

9 Q. So such a list does exist, right?

10 MS. BRUNO: Objection as to form.

11 You can answer if you know.

12 THE WITNESS: I wouldn't describe it as
13 a list, but yes, there's set prices that are
14 stored and saved in our -- maintained.

15 BY MR. DEVITO:

16 Q. And for a customer who is purchasing an
17 aftermarket MPA on a handful of products, is the
18 MPA priced on a per-product basis?

19 A. Yes.

20 Q. Does the customer receive the
21 per-product pricing?

22 MS. BRUNO: Objection as to form.

23 You can answer if you know.

24 THE WITNESS: It would be discussed by

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1 telephone, but the paperwork we send the
2 customer would not break down the individual
3 prices.

4 BY MR. DEVITO:

5 Q. When you say "it would be discussed by
6 telephone," is there a policy that says Sears
7 has to, on one of these calls, explain to the
8 customer this product is going to cost you X,
9 this product is going to cost you Y? Does that
10 always happen?

11 A. No.

12 MS. BRUNO: Just going to object to
13 form.

14 THE WITNESS: Oh.

15 MS. BRUNO: Your answer can stand.

16 THE WITNESS: Sorry. I'll slow down.

17 BY MR. DEVITO:

18 Q. So other than the total price, is there
19 anything that's -- any pricing information that
20 is communicated to the customer in writing?

21 A. No.

22 Q. And who -- who at Sears is responsible
23 for setting prices?

24 MS. BRUNO: Objection.

22 (Pages 82 to 85)

<p style="text-align: right;">Page 86</p> <p>1 You can answer if you know.</p> <p>2 THE WITNESS: It's --</p> <p>3 BY MR. DEVITO:</p> <p>4 Q. Let me ask the question more clearly.</p> <p>5 Who's -- who at Sears is responsible</p> <p>6 for setting the prices for an MPA with respect</p> <p>7 to particular products?</p> <p>8 MS. BRUNO: Same objection.</p> <p>9 You can answer if you know.</p> <p>10 THE WITNESS: The product manager would</p> <p>11 build the price recommendation, and then it</p> <p>12 would be approved by Katrina and Gary and --</p> <p>13 BY MR. DEVITO:</p> <p>14 Q. And the product manager is Ashly Jobin?</p> <p>15 A. Yes.</p> <p>16 Q. And was Ashly Jobin the product manager</p> <p>17 2010 to 2015?</p> <p>18 A. No.</p> <p>19 Q. Who was that?</p> <p>20 A. It didn't exist in this exact structure</p> <p>21 in 2010. So before Ashly, Demi was the product</p> <p>22 manager -- I'm sorry -- yeah, before Ashly, Demi</p> <p>23 was the product manager and she was the -- Demi</p> <p>24 was the inaugural product manager to have that</p>	<p style="text-align: right;">Page 88</p> <p>1 other level?</p> <p>2 MS. BRUNO: Objection as to form.</p> <p>3 BY MR. DEVITO:</p> <p>4 Q. I think, yes, is what I'm asking, at</p> <p>5 the customer level.</p> <p>6 A. Okay. No, we don't. If we've changed</p> <p>7 the format over the years, we probably have an</p> <p>8 old copy of that somewhere, but no, we don't</p> <p>9 maintain an archival of Customer Jones got</p> <p>10 certificate number on such and such a day, so</p> <p>11 send one to them or put it on in the file</p> <p>12 cabinet or store it on the hard drive. We don't</p> <p>13 keep it that way.</p> <p>14 Q. So how do you keep a record of what</p> <p>15 MPAs have been sold to particular customers?</p> <p>16 A. We have a data warehouse. At my level,</p> <p>17 I would use a system called MPS to look up a</p> <p>18 customer by phone number or name and address,</p> <p>19 and it would show me on the screen the</p> <p>20 agreements that they've purchased and their</p> <p>21 status: Expired, active.</p> <p>22 Q. When a customer calls up and asks for</p> <p>23 service with respect to a particular product,</p> <p>24 does someone make a check of a system to see</p>
<p style="text-align: right;">Page 87</p> <p>1 exact pricing responsibility for the protection</p> <p>2 agreement. Prior to that, it was a pricing</p> <p>3 manager or underwriting manager that would build</p> <p>4 pricing recommendations and present to Katrina</p> <p>5 and Gary.</p> <p>6 Q. I see on the org chart, there's someone</p> <p>7 named Earnestine Miller, PA pricing specialist.</p> <p>8 Is she involved in this pricing</p> <p>9 process?</p> <p>10 A. In -- yes. She's more of a data entry</p> <p>11 clerk than any kind of ownership or strategic</p> <p>12 decision-making level.</p> <p>13 Q. Could you tell me what an MPA</p> <p>14 certificate is?</p> <p>15 A. It's the proof of purchase that we</p> <p>16 snail mail or e-mail to a customer when they</p> <p>17 either request a reprint or at time of purchase</p> <p>18 that we send to them that indicates what's</p> <p>19 covered, until when, and includes the terms and</p> <p>20 conditions on the back.</p> <p>21 Q. Does Sears maintain copies of all the</p> <p>22 MPA certificates that it has issued?</p> <p>23 A. At the customer level?</p> <p>24 Q. Well, you tell me. As opposed to what</p>	<p style="text-align: right;">Page 89</p> <p>1 whether that product is on an MPA?</p> <p>2 A. The system prompts the service order</p> <p>3 type to be created, whether it's a collect call</p> <p>4 or a PA call, yes.</p> <p>5 Q. What's a collect call?</p> <p>6 A. The customer's going to have to pay out</p> <p>7 of pocket because they have no coverage on that</p> <p>8 item. So I need my refrigerator fixed, I'd like</p> <p>9 Sears to come out and work on it.</p> <p>10 We say: Okay. We'll come out and for</p> <p>11 \$89, we'll tell you what's wrong and that will</p> <p>12 go towards the repair if you opt. Yes, let's do</p> <p>13 it.</p> <p>14 Q. So they're just calling Sears for</p> <p>15 service on something they own?</p> <p>16 A. Right. Right.</p> <p>17 Q. But it has nothing to do with the</p> <p>18 protection agreements?</p> <p>19 A. Right. But when it's a PA-covered item</p> <p>20 and the call center agent is creating a service</p> <p>21 order, it will show that it's a PA-covered item.</p> <p>22 So we would not discuss the minimum service</p> <p>23 charge and so forth with the customer. We would</p> <p>24 say: Yeah, we'll be right out.</p>

<p style="text-align: right;">Page 90</p> <p>1 Q. Are there ever conflicts between the</p> <p>2 customer and Sears concerning whether or not a</p> <p>3 product is covered on an MPA?</p> <p>4 A. Yes.</p> <p>5 Q. And how do you resolve those?</p> <p>6 MS. BRUNO: Objection as to form.</p> <p>7 You can answer.</p> <p>8 THE WITNESS: It completely depends on</p> <p>9 the scenario. I mean, it could be that the</p> <p>10 customer has multiple phone numbers, so we're</p> <p>11 simply not looking in the right file. You've</p> <p>12 got a house here, and you've got one out in the</p> <p>13 suburbs. It could be for some reason your</p> <p>14 coverage didn't get from the retail point of</p> <p>15 purchase into the aftermarket computer system.</p> <p>16 It just -- it fell out. Exceedingly rare, but</p> <p>17 it can happen.</p> <p>18 Customer confusion: I thought I had</p> <p>19 covered it. Maybe I didn't. Oh, I'm calling</p> <p>20 Sears. I thought I had coverage with Sears.</p> <p>21 Maybe I have coverage with Acme. That's a</p> <p>22 really long list of scenarios that can exist,</p> <p>23 and that's why we have those inbound call</p> <p>24 centers to resolve.</p>	<p style="text-align: right;">Page 92</p> <p>1 A. The most common would be the customer</p> <p>2 canceled the protection agreement but they still</p> <p>3 have the certificate. So they call us and think</p> <p>4 they have coverage because they forgot -- forgot</p> <p>5 or they chose (gesturing) to forget that they</p> <p>6 canceled it, and we would remind them: Oh, on</p> <p>7 such and such a day, we refunded X dollars to</p> <p>8 the Visa ending in 1234. So that contract is no</p> <p>9 longer valid because you've already been</p> <p>10 refunded for it.</p> <p>11 Q. Has there ever been a scenario in which</p> <p>12 the customer was right about whether or not the</p> <p>13 coverage existed and Sears was wrong?</p> <p>14 A. The way you're describing that</p> <p>15 question, no, not to my knowledge.</p> <p>16 Q. The way you put the caveat on your</p> <p>17 answer suggested that if I described it</p> <p>18 differently, you might have a different answer.</p> <p>19 What were you thinking of there?</p> <p>20 A. Just those finding the right file</p> <p>21 situations, where if the customer's got a</p> <p>22 certificate and they had moved, so now we're</p> <p>23 looking in the wrong file, but I've never come</p> <p>24 across a scenario where our warehouse -- our</p>
<p style="text-align: right;">Page 91</p> <p>1 BY MR. DEVITO:</p> <p>2 Q. Are there ever scenarios in which the</p> <p>3 customer has a certificate with a product listed</p> <p>4 on it that Sears doesn't believe is -- has</p> <p>5 coverage?</p> <p>6 MS. BRUNO: Objection as to form.</p> <p>7 You can answer.</p> <p>8 THE WITNESS: I don't think I</p> <p>9 understand the scenario.</p> <p>10 BY MR. DEVITO:</p> <p>11 Q. Well, just because Sears doesn't</p> <p>12 maintain actual physical certificates, I'm just</p> <p>13 wondering whether there's -- you're aware of any</p> <p>14 scenario in which the customer says: No, I'm</p> <p>15 looking at my certificate. It says I've got</p> <p>16 coverage for X product. And the Sears person is</p> <p>17 saying: No. I'm looking at our computer</p> <p>18 system, and it says you don't have coverage for</p> <p>19 that product.</p> <p>20 Does that ever happen to your</p> <p>21 knowledge?</p> <p>22 A. Yes.</p> <p>23 Q. And how -- if you know, how did that</p> <p>24 happen?</p>	<p style="text-align: right;">Page 93</p> <p>1 data warehouse lost records. It's usually just</p> <p>2 a matter of finding the right customer</p> <p>3 agreement.</p> <p>4 Q. The MPA certificates, are they -- other</p> <p>5 than the listing of the particular products on</p> <p>6 them, are they ever modified for particular</p> <p>7 customers?</p> <p>8 MS. BRUNO: Your question being the</p> <p>9 actual certificate?</p> <p>10 MR. DEVITO: Yes.</p> <p>11 THE WITNESS: I don't -- I don't</p> <p>12 understand the question.</p> <p>13 BY MR. DEVITO:</p> <p>14 Q. Meaning can a customer say, you know,</p> <p>15 "I don't like this provision in here; would you</p> <p>16 take it out," for example?</p> <p>17 A. They could ask, but we've never done</p> <p>18 that to my knowledge.</p> <p>19 Q. So the -- I think the answer, then, to</p> <p>20 my question is "no," that -- or the MPA</p> <p>21 certificates are not modified on a particular --</p> <p>22 on a customer-by-customer basis?</p> <p>23 A. The terms and conditions, no.</p> <p>24 Q. So other than the information</p>

24 (Pages 90 to 93)

<p style="text-align: right;">Page 94</p> <p>1 identifying the customer and identifying the</p> <p>2 products that are covered by the MPA, is there</p> <p>3 anything else on those certificates that could</p> <p>4 vary?</p> <p>5 A. No.</p> <p>6 Q. In other words, they're not negotiable</p> <p>7 by the customer in any way?</p> <p>8 A. Correct, they are not.</p> <p>9 Q. Now, we went over a little bit earlier</p> <p>10 about different versions of the MPA that have</p> <p>11 been used by Sears. There's the version that</p> <p>12 we're -- we were looking at in Exhibit 9.</p> <p>13 That's from 2010, and you said that there were</p> <p>14 two others subsequent, 2013 and 2015.</p> <p>15 Do you know of, in your time working at</p> <p>16 Sears, how many other versions of the document</p> <p>17 there have been?</p> <p>18 A. Best guess would be ten, over twenty</p> <p>19 years that I've been there, but that's not</p> <p>20 something I've ever kept an accurate count on.</p> <p>21 Q. And other than the 2013 and 2015</p> <p>22 versions which you talked about, did you have</p> <p>23 any input regarding the terms of any of the</p> <p>24 other MPAs?</p>	<p style="text-align: right;">Page 96</p> <p>1 responsible for the wording and verbiage of the</p> <p>2 terms and conditions.</p> <p>3 Q. Now, if you'll look at Section 2 of</p> <p>4 the -- I'm sorry -- of, I guess, Exhibit 9 --</p> <p>5 we're still on there.</p> <p>6 A. Okay.</p> <p>7 Q. -- which describes eligibility for</p> <p>8 coverage, it says "You represent that the</p> <p>9 products listed on the reverse side --</p> <p>10 product(s) listed on the reverse side is in</p> <p>11 proper operating condition at the start of</p> <p>12 coverage and the information related to 'Date</p> <p>13 Purchased' is correct."</p> <p>14 And we had talked a little about this</p> <p>15 earlier, but is there any effort made to verify</p> <p>16 condition before issuing an MPA?</p> <p>17 A. We ask the customer if it's in good</p> <p>18 working order.</p> <p>19 Q. Other than asking the customer, is</p> <p>20 there any effort made to verify the condition?</p> <p>21 A. No.</p> <p>22 Q. Now -- and there have been instances in</p> <p>23 which coverage ultimately is denied because it's</p> <p>24 determined that a product was not in proper</p>
<p style="text-align: right;">Page 95</p> <p>1 A. Prior to 2010?</p> <p>2 Q. Prior to 2013. If you had input into</p> <p>3 the 2010 version, tell me.</p> <p>4 A. Um... (reviewing document.)</p> <p>5 No and no. No on 2010, and no on</p> <p>6 prior.</p> <p>7 Q. And who at Sears is responsible for the</p> <p>8 language used in the MPA?</p> <p>9 MS. BRUNO: I'm just going to object as</p> <p>10 to form.</p> <p>11 You can answer if you know.</p> <p>12 THE WITNESS: It's a team of people.</p> <p>13 So "responsible" can be a tricky question, but I</p> <p>14 would say the person most responsible is Sheila</p> <p>15 Dunaway.</p> <p>16 BY MR. DEVITO:</p> <p>17 Q. And who is she?</p> <p>18 A. I call her our lawyer, but I don't</p> <p>19 think that's at all close to the right term.</p> <p>20 She is the manager of service contracts</p> <p>21 administration. She's third from -- or fourth</p> <p>22 from the left.</p> <p>23 Q. Is she a lawyer?</p> <p>24 A. No. But she's most directly</p>	<p style="text-align: right;">Page 97</p> <p>1 operating condition at the outset of the</p> <p>2 contract, right?</p> <p>3 A. Yes.</p> <p>4 Q. And does Sears have a record of those</p> <p>5 instances?</p> <p>6 A. (No response.)</p> <p>7 Q. How would those instances be tracked if</p> <p>8 at all?</p> <p>9 MS. BRUNO: I'm just going to object as</p> <p>10 to form.</p> <p>11 You can answer if you know.</p> <p>12 THE WITNESS: I don't know of any</p> <p>13 report or system that we currently use or have</p> <p>14 used to track that specific scenario.</p> <p>15 BY MR. DEVITO:</p> <p>16 Q. Is there a record more generally of</p> <p>17 instances in which coverage is denied?</p> <p>18 MS. BRUNO: I'm just going to object as</p> <p>19 to form.</p> <p>20 You can answer.</p> <p>21 THE WITNESS: The closest would be that</p> <p>22 we canceled the protection agreement and we used</p> <p>23 the reason code "Technician requested" would be</p> <p>24 an indicator in that direction, but it's not</p>

<p style="text-align: right;">Page 98</p> <p>1 specific to good working order. 2 BY MR. DEVITO: 3 Q. And how about confirming the date 4 purchased, what does Sears do to confirm the 5 date purchased? 6 A. We ask the customer how old the product 7 is. 8 Q. Depending on the age of the product, 9 it's certainly possible that the customer 10 doesn't accurately remember the -- how old the 11 product is; is that fair? 12 A. I don't understand. You want me to 13 speculate whether or not a customer is -- would 14 know? 15 Q. Well, no. Let me rephrase the 16 question. 17 A. Okay. 18 Q. Are you aware of situations in which 19 the customer gave you an incorrect date as to 20 when they purchased a product? 21 A. It's happened, yeah. 22 Q. And if -- does Sears have to determine 23 that the customer did that intentionally in 24 order to cancel the contract, like that the</p>	<p style="text-align: right;">Page 100</p> <p>1 A. No. 2 Q. When a customer makes a call for 3 service and a technician goes out there to their 4 home, does -- and let's say that this customer 5 has multiple items on an MPA. Will the 6 technician then inspect everything that's on the 7 MPA? 8 A. No. 9 MR. DEVITO: Switching gears here. Do 10 you want to take another break? 11 MS. BRUNO: Sure. Yeah. You want take 12 another -- it's 11:42. Do you want to break for 13 lunch or do you want to go for a while and then 14 have lunch? I think we're okay either way. 15 I'm not speaking for you but -- 16 THE WITNESS: That's okay. 17 MR. DEVITO: I would prefer to go a 18 little longer and then take lunch. 19 MS. BRUNO: Let's do that. Yeah. 20 MR. DEVITO: So if we could just take 21 five and then I'll go for another half hour, 22 45 minutes and then we'll take lunch. 23 MS. BRUNO: That's good. 24</p>
<p style="text-align: right;">Page 99</p> <p>1 customer had lied about how old the product was? 2 A. No. 3 Q. So if they just misremembered, you 4 know, when they bought the product because the 5 repair technician goes out and sees that the 6 thing is three years older than they were told 7 it was, is that a reason why Sears would cancel 8 coverage? 9 MS. BRUNO: I'm just going to object to 10 form. 11 You can answer if you can. 12 THE WITNESS: Yes. 13 BY MR. DEVITO: 14 Q. Now, Section 2 also says there, "We 15 reserve the right to inspect the product listed 16 on the reverse side to determine eligibility for 17 coverage." 18 I think I understand your testimony to 19 be that Sears doesn't inspect the products prior 20 to issuing an MPA; is that right? 21 A. That's correct. 22 Q. Are you aware of any instances in which 23 Sears has done an inspection prior to issuing an 24 MPA?</p>	<p style="text-align: right;">Page 101</p> <p>1 (Recess taken from 11:42 a.m. 2 to 11:52 a.m.) 3 (Exhibit 10 was marked for 4 ID.) 5 BY MR. DEVITO: 6 Q. So you've been handed what's been 7 marked as Exhibit 10 and I'll -- the Bates 8 number on the first page in the document is 9 SEARS 2639. I'll just state that I included 10 here the table of contents and then various 11 excerpts from the document. It's a very lengthy 12 document. 13 Are you familiar with this document? 14 A. Yes. 15 MS. BRUNO: And by that you mean the 16 Facilitator Guide, not what you've put in front 17 of him with the excerpts? 18 MR. DEVITO: Not the excerpts, yes. 19 BY MR. DEVITO: 20 Q. Generally speaking, the title of the 21 document is "National Inbound Sales NHT 22 Facilitator Guide." Are you familiar with that? 23 A. Yes. 24 Q. What generally does this document</p>

26 (Pages 98 to 101)

Page 102

1 contain?

2 **A. It would be used as our training guide**
3 **for newly hired inbound customer service and**
4 **sales representatives. So it would contain the**
5 **policy and procedures of administering a**
6 **protection agreement, selling it, renewing it,**
7 **those kind of things.**

8 Q. How often is this document updated?

9 MS. BRUNO: Objection as to form.

10 You can answer if you know.

11 THE WITNESS: As needed. It probably
12 gets a major rewrite every couple of years with
13 appendixes added as needed when policies change
14 or things are added.

15 BY MR. DEVITO:

16 Q. Do you know if this is the most current
17 version?

18 **A. It's the most current version of the**
19 **complete facilitator guide. There might be some**
20 **add-on that isn't here.**

21 Q. I guess therein lies the difficulty of
22 not bringing the whole document, but I didn't
23 want to put in 1,300 pages into the record.

24 But when you say "that isn't here" --

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1 **A. This is the most current document that**
2 **we use to train new associates.**

3 Q. Okay. So yeah, my -- perhaps the most
4 accurate question is: Is the August 15th, 2011
5 facilitator guide still the one you're using?

6 **A. Yes.**

7 Q. When it says National Inbound Sales
8 NHT, what does that mean? What does the NHT
9 mean?

10 **A. New hire training.**

11 Q. If you could flip to page 74, which is
12 the first page I've included after the table of
13 contents, there it says "Customer Care
14 Network/Home Services Call Center." What's that
15 referring to?

16 **A. The sum of the Sears call centers that**
17 **handle both protection agreement phone calls,**
18 **the six call centers that we've been talking**
19 **about this morning, and then additionally the**
20 **call centers that handle scheduling of**
21 **dispatching repair technician.**

22 Q. And then below that, about halfway or
23 so down the page, it says "Rapid
24 Resolution (RR)." What is that?

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1 **A. When a customer -- it's a specialized**
2 **team within that repair scheduling group, that**
3 **when a customer has a covered product, we will**
4 **attempt to do some easy triage of the product**
5 **over the phone to see if we can help get the**
6 **customer's product up and running immediately**
7 **for them rather than having them have to wait**
8 **for a technician to come out.**

9 **So a silly example would be: Did you**
10 **check the circuit breaker?**

11 **Oh, it's working now. Thanks. Never**
12 **mind.**

13 **Then the customer doesn't have to wait**
14 **for the tech to come out and do that.**

15 Q. Now, is rapid resolution used in all
16 cases where you have someone with a covered
17 product under an MPA or you'd -- it's based
18 specifically to the problem that the customer's
19 identified?

20 **A. It's product-specific, but it's not**
21 **problem-specific, no. So they're calling from**
22 **their home phone and they've indicated through**
23 **our automated system that they need repair on**
24 **their refrigerator. Our system would see that**

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1 **that refrigerator is covered and route that call**
2 **to a rapid resolution agent.**

3 Q. Okay. So there's an automated system
4 that directs particular calls into this rapid
5 resolution system?

6 **A. Yes.**

7 Q. And is there a particular call center
8 that's associated with rapid resolution?

9 **A. Not a single one, no. It's spread out**
10 **across a few.**

11 Q. Okay. Are there particular individuals
12 that are responsible for that?

13 **A. Yes.**

14 Q. So there are customer service
15 representatives that all they do is rapid
16 resolution calls?

17 **A. Yes.**

18 Q. Now, if you flip to the next page, it's
19 on -- it's double-sided, so page 75. At the top
20 there, it says "Customer Solutions." And what
21 is that?

22 **A. It's a variety of teams that handle**
23 **escalated calls.**

24 Q. What teams fit within that?

27 (Pages 102 to 105)

<p style="text-align: right;">Page 106</p> <p>1 MS. BRUNO: I'm just going to object to 2 the form. 3 You can answer if you know. 4 THE WITNESS: (Reviewing document.) 5 For example, in the service contracts 6 group, the Master Protection Agreement, that 7 would be the PABA, so the benefits 8 administration. So they'd have the ability to 9 open a case and do investigations into whether 10 or not we've lived up to our end of the 11 contract. 12 That's the most common example of an 13 escalated complaint. Customer thinks this 14 should be covered and I want you guys to fix it 15 under the protection agreement, and there's some 16 back and forth as to whether or not it's part of 17 our terms and conditions. 18 So it would be escalated to that PABA 19 group. It's described further down also. That 20 would be our service -- the customer solutions. 21 The "Retail" and the "HIPS," I'm not as familiar 22 with those. So I couldn't describe them. 23 BY MR. DEVITO: 24 Q. So you said -- you used the words "a</p>	<p style="text-align: right;">Page 108</p> <p>1 questions or give them a satisfactory outcome, 2 so whether it's -- I mean, let me get you over 3 to our benefits administration team and see if 4 they could help you further. 5 BY MR. DEVITO: 6 Q. And this could be because the customer 7 service representative who took the call doesn't 8 know how to answer it or because the customer 9 says, you know, I don't like what you're telling 10 me, get me somebody else or -- those are things 11 that would fit within -- that would get a 12 situation escalated to customer solutions? 13 MS. BRUNO: Just objection as to form. 14 You can answer. 15 THE WITNESS: Yeah, I would say those 16 would be good examples. 17 BY MR. DEVITO: 18 Q. And what is PABA, you referred to 19 earlier? 20 A. That's the protection agreement 21 benefits administration team. They are an 22 inbound group that handles calls from customers 23 who are looking for fulfillment of the terms and 24 conditions. So some of the call types would</p>
<p style="text-align: right;">Page 107</p> <p>1 variety of teams" and I'm -- are you just 2 referring to what it says below, "Customer 3 Solutions, Retail, Service Contracts, HIPS"? Is 4 that what you meant when you said "a variety of 5 teams"? 6 A. Yes. 7 Q. Is customer solution different than 8 rapid resolution? 9 A. Yes. 10 Q. And I think you -- so you've indicated 11 that some kind of escalation is required to get 12 into customer solutions; is that right? 13 A. Not all the time, but yeah, I -- they 14 handle some front line product -- contract 15 fulfillment, like food loss reimbursement, but 16 they also handle escalated calls. 17 Q. And what -- how does Sears define an 18 escalated call? 19 MS. BRUNO: Objection as to form. 20 You can answer if you know. 21 THE WITNESS: I don't think we've ever 22 defined that, but it's where the front line 23 agent, the national inbound sales associate 24 isn't able to help the customer answer their</p>	<p style="text-align: right;">Page 109</p> <p>1 include food loss reimbursement, no lemon 2 guarantee qualification, general replacement 3 authorization, those kind of things. 4 Q. And that's a dedicated group of 5 employees that only does that sort of work? 6 A. Yes. 7 Q. Now, moving down the page, it says 8 "Service Contracts." And then it says -- 9 there's a PABA team within service contracts. 10 Is that different than the PABA team in customer 11 solutions? 12 A. No, same thing, same team. 13 Q. Now, if you look at the two things that 14 we have just been discussing, under "Customer 15 Solutions" that says the PABA group and then it 16 gives description of what they do, "Handles 17 calls from customers concerning protection 18 agreements and policy reimbursements." 19 And then if you look to the description 20 under "Service Contract," it says "Handles calls 21 from customers concerning protection agreement 22 fulfillment and policy reimbursements." 23 Is there any difference between those 24 two other than the -- I don't mean literally.</p>

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1 There's a one-word difference.

2 **A. The "fulfillment."**

3 Q. Right. Is there anything that is
4 supposed to be conveyed differently between
5 those two sentences?

6 MS. BRUNO: Objection as to form.

7 You can answer if you understand.

8 THE WITNESS: From my experience within
9 the team, no, there's no difference. I don't
10 know why that extra word is down below and not
11 up above. To me, it doesn't have any meaning or
12 value to differentiate a PABA customer solution
13 group from a PABA service contracts group
14 because there isn't any difference. It's the
15 same team.

16 BY MR. DEVITO:

17 Q. And then below that it says "Email
18 Team." And under PABA -- there's another PABA
19 group under there and it says "Customer
20 complaints or concerns." And is that a
21 different group of people?

22 **A. It's not a different group of people.**
23 **It may be a subset of the PABA group that's been**
24 **trained to specialize in e-mail correspondence.**

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1 **I haven't talked with Mark and team recently to**
2 **find out exactly how they divvy up that**
3 **workload, but it would be a PABA advisor that**
4 **would be handling that those e-mail**
5 **communications as well.**

6 Q. And so this is -- these are e-mails
7 that are coming in from customers with respect
8 to protection agreements?

9 **A. Yeah.**

10 Q. Where do those e-mails come from?

11 MS. BRUNO: Objection as to form.

12 You can answer if you know.

13 BY MR. DEVITO:

14 Q. Well, that's a bad question.

15 How does Sears receive those e-mails?

16 **A. Typically, the customer has either**
17 **replied to some random e-mail that they got from**
18 **Sears, whether it was about protection**
19 **agreements or not, or they've gone on to**
20 **Sears.com and clicked on "Contact us" and it's**
21 **gone -- you know, it comes to the corporate**
22 **e-mail team, who then filters out the work based**
23 **on this is a retail question, this is a service**
24 **contracts question, and they kind of send it**

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1 **down the rate path so that an expert in the**
2 **field can respond to the customer.**

3 Q. So there's a sort of general Sears
4 e-mail that you can find through the website
5 that's getting all these kinds of questions that
6 are then being routed; is that right?

7 **A. I think so. I mean, the last time I**
8 **was on Sears.com, there was -- yeah, there was a**
9 **"Contact us" and you could fill in the form. I**
10 **don't know that that's an e-mail or how that's**
11 **technically, you know, called, but for all**
12 **intents and purposes, yeah.**

13 Q. And so there's a -- I presume a team of
14 people that are -- that's monitoring that e-mail
15 address and routing e-mails to particular
16 divisions of Sears?

17 MS. BRUNO: I'm just going to object to
18 form.

19 You can answer if you know.

20 THE WITNESS: Yeah.

21 BY MR. DEVITO:

22 Q. Is there an e-mail address that's
23 specific to protection agreements?

24 **A. No.**

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1 Q. So these e-mail teams that we're
2 talking about here are getting e-mails either
3 from this generic Sears e-mail address that
4 we've been talking about or from a reply to some
5 kind of Sears-initiated e-mail.

6 Is there any other way for e-mails to
7 get to these people on the e-mail team?

8 MS. BRUNO: I'm just going to object to
9 form.

10 You can answer if you know.

11 THE WITNESS: Probably, but I don't
12 know a specific -- I can't say that there isn't,
13 but I'm not close to that process to say these
14 are -- this is every scenario that they've ever
15 received an e-mail under.

16 BY MR. DEVITO:

17 Q. Do the people on the Sears e-mail team,
18 like, respond directly to customers and then a
19 customer then a year later could have a problem
20 and just write back to that same e-mail? Is
21 that something that could happen?

22 MS. BRUNO: Objection as to form.

23 You can answer if you know.

24 THE WITNESS: It shouldn't, no.

29 (Pages 110 to 113)

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1 BY MR. DEVITO:

2 Q. So the e-mails that go back to the
3 customer are going through some sort of
4 centralized Sears e-mail?

5 A. If we reply, yes.

6 Q. Do you know the address for the -- this
7 generic Sears e-mail that we're talking about?

8 MS. BRUNO: I'm just objecting to form.

9 You can answer if you know.

10 THE WITNESS: No, not by heart.

11 BY MR. DEVITO:

12 Q. Do you know how many people are on this
13 e-mail team?

14 A. I don't know.

15 Q. If you could flip one full page, sort
16 of two pages to page 120, I will give the Bates
17 number for that is SEARS 2758.

18 And on that page it is discussing
19 "serviceable merchandise." How does Sears
20 define what is meant by "serviceable
21 merchandise"?

22 A. Generally speaking, it's merchandise
23 that our technicians are trained to repair. We
24 have a source for replacement parts and a source

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1 for technical repair material.

2 Q. Could you explain what you meant by
3 both of those things? So you have a source for
4 replacement parts? That just means that Sears
5 has the ability to find replacement parts?

6 A. Yes.

7 Q. I'd like to try to dig a little deeper
8 into that. I mean, you have -- does Sears have
9 an established source for replacement parts?
10 I'm just trying to get an understanding of sort
11 of to what extent that means the parts are --
12 you know, can be found somewhere in the world or
13 the parts are sitting in a warehouse that Sears
14 owns or what does that mean?

15 A. I'm not directly involved in the parts
16 supply chain. I can speak to my knowledge of
17 it, which is we attempt to have relationships
18 with original equipment manufacturers to buy
19 parts from them. I don't know of a -- I'm
20 assuming there are third-party parts builders
21 and suppliers that we buy from. I don't know
22 any of them by name, and in some situations, we
23 will attempt to find them on the open market.
24 We have a team of people who try to -- in order

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1 to fulfill a repair, will try to find a part.

2 Q. And other than the availability of
3 replacement parts, what was the other component
4 of that?

5 A. Technical information, the schematics
6 and training, so a tech would know what to do.

7 Q. And that definition that you just gave
8 me is -- is that defined in the MPA?

9 MS. BRUNO: Objection as to form.

10 THE WITNESS: I don't understand the
11 question.

12 BY MR. DEVITO:

13 Q. Well, where are you getting that
14 definition from of "serviceable merchandise"?

15 A. Experience in the business. That's
16 not -- it's not defined in the protection
17 agreement, because we wouldn't have covered the
18 item if it wasn't what we thought was
19 serviceable merchandise. We don't have a
20 merchandise code for swing sets, so we've never
21 defined serviceable merchandise to the consumer.

22 Q. Does serviceable merchandise have a
23 brand element to it?

24 A. For protection agreement coverage, yes.

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1 Q. And so what -- could you explain that
2 to me?

3 A. In the Sears world, we will attempt to
4 repair things on collect call that we wouldn't
5 necessarily enter into a protection agreement
6 on. So for protection agreement coverage, yes,
7 brand is an element.

8 Q. This definition of serviceable
9 merchandise that you're operating with and that
10 you gave to me, is that written down anywhere?

11 A. Not to my knowledge.

12 Q. So it's basically just your
13 understanding based on years of working at
14 Sears?

15 A. Yes.

16 Q. Does everyone at Sears have that same
17 understanding?

18 MS. BRUNO: Objection as to form.

19 BY MR. DEVITO:

20 Q. I mean, how -- is --

21 A. In my --

22 Q. -- is it possible that other people at
23 Sears understand that concept differently?

24 MS. BRUNO: Same objection.

30 (Pages 114 to 117)

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1 THE WITNESS: I'm sure it is, yes.

2 BY MR. DEVITO:

3 Q. If you flip the page, about midway down
4 the page, there's reference to something called
5 "The PA Resource Center." What is that?

6 A. That's the intranet home page for
7 protection agreement coverage.

8 Q. And what --

9 A. Exhibit 8 came from it, for example.

10 Q. Came from it, okay.

11 A. Or is stored -- it's -- that's a screen
12 print of something that lives on the PA Resource
13 Center.

14 Q. What other kind of information is on
15 the PA Resource Center?

16 A. Products, so sample certificates of a
17 master repair, all the protection agreements we
18 sell, selling rules and guidelines, covered and
19 not covered grid and some general training
20 tools, frequently asked questions. It's a --
21 it's meant as the internal associate-facing
22 helpful tool place for administering and selling
23 and talking about and understanding protection
24 agreements.

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1 Q. And who has access to that?

2 A. Anyone within the Sears firewall.

3 Q. And who generally is using that?

4 A. Most often, it's the agents and
5 managers within the six call centers that we've
6 been talking about and also the agents and
7 managers in the customer care network call
8 centers and sometimes, to a lesser degree,
9 technicians and tech managers.

10 Q. And I assume you can, like, print out
11 any kind of information that is stored on there,
12 is that right, the same way that you generated
13 Exhibit 8?

14 MS. BRUNO: Objection as to form.

15 THE WITNESS: Sure. It's a website.
16 So it might not print all that pretty, but yeah,
17 we could print any screen we wanted.

18 BY MR. DEVITO:

19 Q. If you flip two pages to page 123,
20 which is SEARS 2761, there's a reference near
21 the top under where it says "Trainer's Note" to
22 an authorized brand list -- "Authorized Brands
23 List." What is that?

24 A. That's the list of brands by product

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1 that we sell protection agreements on.

2 Q. So it's -- when you say "by product,"
3 it's a product type and then list of brands? Is
4 that what you're telling me?

5 A. Exactly.

6 Q. And what is that list used for?

7 A. Determining eligibility for PA
8 coverage.

9 Q. And then just below that, it says
10 "High-end merchandise products are on file with
11 special merchandise codes that will not price
12 via Ciboodle." What are high-end merchandise
13 products?

14 MS. BRUNO: Objection as to form.

15 You can answer.

16 THE WITNESS: More expensive products.
17 It would be the Bentley of cars. It's things
18 like a Viking range or a Sub-Zero refrigerator.
19 BY MR. DEVITO:

20 Q. And those are identified somewhere with
21 special coding? Is that what that's saying?

22 A. Yeah, the merchandise code, what we use
23 in our system would end with something close to
24 or similar to HI -- or HE -- I'm sorry -- for

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1 high end.

2 Q. What does it mean when it says
3 "High-end merchandise products"... "will not
4 price via Ciboodle"?

5 A. Ciboodle.

6 Q. Sorry.

7 A. No. It's an internal system. You
8 shouldn't know how to pronounce it. Ciboodle is
9 the desktop system that associates use to
10 retrieve and produce price quotes to customers,
11 and high-end merchandise codes are not built to
12 price in Ciboodle. So you wouldn't be able to
13 retrieve or produce pricing from the front end
14 application.

15 Q. So how would you obtain pricing for
16 high-end merchandise products?

17 A. In the aftermarket we wouldn't.
18 It's -- the high-end merchandise is sold -- if
19 it's sold at retail, we would sell coverage on
20 that item only.

21 Q. But how about if someone bought it and
22 then wanted to renew?

23 A. If it's renewable, we would use NPS,
24 which is the legacy system that lives kind of

31 (Pages 118 to 121)

<p style="text-align: right;">Page 122</p> <p>1 below Ciboodle. It's a mainframe green screen 2 old technology, but it's still the source of 3 most of our pricing and customer database. 4 Ciboodle is the more mouse-click-friendly user 5 application that the majority of the front line 6 agents use. If there were some extenuating 7 circumstance where we needed to retrieve a price 8 that Ciboodle wouldn't give us, a manager would 9 use NPS. 10 Q. And that system is still being 11 maintained? 12 A. Yes. 13 Q. What does NPS stand for, if you know? 14 A. Net -- national parts and service or 15 something like that, but I don't re- -- -- if 16 you found a screen that actually showed it on 17 there, I could be completely wrong. 18 Q. So other than these high-end 19 merchandise products that will not price via 20 Ciboodle, will all other products price via 21 Ciboodle? 22 MS. BRUNO: Objection as to form. 23 You can answer. 24 THE WITNESS: If it's an eligible</p>	<p style="text-align: right;">Page 124</p> <p>1 we've closed all of those. 2 Q. This document hasn't been updated to 3 reflect the closure of Great Indoors? 4 A. Correct. 5 Q. If you could flip a few pages until you 6 get to page 310 -- 7 A. Okay. 8 Q. -- there it talks about "Refund or 9 Cancellation Policy." And it says "If Sears' 10 refund or cancellation policy is mentioned 11 during the presentation, either by you or by the 12 customer, all material terms and conditions of 13 that policy must also be disclosed." 14 What kind of presentation is being 15 referred to there? 16 A. The sales presentation, whether it's -- 17 in this context, this is specific for inbound. 18 So in that context, it's customers called us and 19 now we're talking to them about buying or 20 renewing coverage. 21 Q. Would it be different for outbound 22 sales? 23 A. No. 24 Q. So does this mean that there's no</p>
<p style="text-align: right;">Page 123</p> <p>1 product that has a price, yeah, Ciboodle would 2 return the pricing. 3 BY MR. DEVITO: 4 Q. If you flip the page, near the top, 5 sort of second full paragraph, it says "If the 6 customer has items that were not purchased from 7 Sears that may be eligible for protection 8 agreement coverage, you must first verify that 9 the brand and merchandise type is listed in the 10 non-Sears purchased merchandise list on the 11 authorized brands list before adding merchandise 12 for coverage." 13 Whose responsibility is it to verify 14 the brand and merchandise type? 15 A. The selling agent. 16 Q. And is -- that's done while they're, 17 for example, on the phone with the customer? 18 A. Yes. 19 Q. Now, there's a reference in the next 20 sentence to "The Great Indoors." What's that? 21 A. That's a retail format that catered to 22 high-end clientele. 23 Q. And that no longer exists? 24 A. Not to my knowledge. I'm pretty sure</p>	<p style="text-align: right;">Page 125</p> <p>1 requirement that the refund or cancellation 2 policy be mentioned? 3 A. Is there no requirement that the refund 4 or cancellation policy be mentioned? Is that -- 5 Q. Well, let me ask it differently. Is 6 there any requirement that the refund or 7 cancellation policy be mentioned? 8 A. No. 9 Q. If the subject of refund or 10 cancellation comes up, is this saying that the 11 sales rep has to read this little script here? 12 A. (Reviewing document.) 13 No. It's not a -- a script. If you're 14 asking does it have to be read verbatim? 15 Q. You tell me. 16 A. No, we don't require that it's read 17 verbatim. We train it as these are the -- this 18 is a sample script that you can use, especially 19 while you're new, but we want our 20 conversations -- our discussions with the 21 customer to sound conversational, so here's the 22 points that you need to hit. You need to make 23 sure that they understand they have 60 days for 24 a full refund or under labor warranty, and then</p>

<p style="text-align: right;">Page 126</p> <p>1 after that it's prorated on a monthly basis.</p> <p>2 That's the kind of stuff that you need</p> <p>3 to disclose to them and make sure they</p> <p>4 understand and answer any questions as does that</p> <p>5 make sense, is that clear, and then you can move</p> <p>6 on is how it would be trained and coached.</p> <p>7 Q. So it's not a script, but they have to</p> <p>8 communicate information that's contained in this</p> <p>9 even though it's set out as a quote?</p> <p>10 A. Correct.</p> <p>11 Q. Now, if you read that section that's in</p> <p>12 quotes there, that only discusses situations in</p> <p>13 which the customer cancels the protection</p> <p>14 agreement; is that right?</p> <p>15 A. Yes.</p> <p>16 Q. It doesn't mention Sears canceling the</p> <p>17 protection agreement?</p> <p>18 A. Correct.</p> <p>19 Q. But Sears must consider its ability to</p> <p>20 cancel the protection agreement a material term</p> <p>21 of protection agreements, right?</p> <p>22 MS. BRUNO: Objection as to form.</p> <p>23 You can answer if you understand?</p> <p>24 THE WITNESS: I don't understand.</p>	<p style="text-align: right;">Page 128</p> <p>1 MS. BRUNO: So what's your question?</p> <p>2 BY MR. DEVITO:</p> <p>3 Q. Do you know any reason why it doesn't</p> <p>4 say that there?</p> <p>5 MS. BRUNO: Object as to form.</p> <p>6 You can answer.</p> <p>7 THE WITNESS: I don't know. I've never</p> <p>8 heard it discussed of whether or not that should</p> <p>9 be included or not.</p> <p>10 BY MR. DEVITO:</p> <p>11 Q. So even if the subject of refunds or</p> <p>12 cancellation of policy comes up, the Sears</p> <p>13 representative does not have to and is not</p> <p>14 instructed to say anything about Sears' ability</p> <p>15 to cancel the contract; is that correct?</p> <p>16 MS. BRUNO: I'm just -- objection to</p> <p>17 form.</p> <p>18 If you understand, you can answer.</p> <p>19 THE WITNESS: You lost me. I'm sorry.</p> <p>20 BY MR. DEVITO:</p> <p>21 Q. That's okay. This -- what we're</p> <p>22 looking at here is what Sears wants its</p> <p>23 representatives to tell someone when the subject</p> <p>24 of refunds or cancellations comes up in the</p>
<p style="text-align: right;">Page 127</p> <p>1 BY MR. DEVITO:</p> <p>2 Q. It's an important term of protection</p> <p>3 agreements that Sears has certain rights to</p> <p>4 cancel, correct?</p> <p>5 MS. BRUNO: Same objection.</p> <p>6 THE WITNESS: It's important enough</p> <p>7 that we included it on the terms and conditions,</p> <p>8 if that's an answer to your question. I'm doing</p> <p>9 my best here.</p> <p>10 BY MR. DEVITO:</p> <p>11 Q. That's fine. Sears includes it in the</p> <p>12 terms and conditions presumably because it wants</p> <p>13 the ability to cancel under certain -- certain</p> <p>14 scenarios; isn't that right?</p> <p>15 MS. BRUNO: Objection as to form.</p> <p>16 THE WITNESS: That's my understanding</p> <p>17 of it, yes.</p> <p>18 BY MR. DEVITO:</p> <p>19 Q. So I'm just wondering whether -- why it</p> <p>20 doesn't say anything here about Sears' right to</p> <p>21 cancel, even though it says, you know, if</p> <p>22 cancellation or refund comes up, all material</p> <p>23 terms and conditions of that policy must also be</p> <p>24 disclosed.</p>	<p style="text-align: right;">Page 129</p> <p>1 discussion, right?</p> <p>2 A. Yes.</p> <p>3 Q. And it doesn't mention anything about</p> <p>4 Sears' ability to cancel, correct?</p> <p>5 A. Agreed.</p> <p>6 Q. Is that because Sears doesn't consider</p> <p>7 its ability to cancel a material term of the</p> <p>8 protection agreement?</p> <p>9 MS. BRUNO: Objection as to form.</p> <p>10 THE WITNESS: I wouldn't classify it</p> <p>11 that way. We consider it a material term</p> <p>12 because we include it in the terms and</p> <p>13 conditions.</p> <p>14 BY MR. DEVITO:</p> <p>15 Q. So you -- Sears does consider it a</p> <p>16 material term and condition of the agreement --</p> <p>17 A. Yes.</p> <p>18 Q. -- its right to cancel?</p> <p>19 A. Yeah.</p> <p>20 Q. In the next section, it says "No formal</p> <p>21 script is included in the system because</p> <p>22 cancellation should not be used as a selling</p> <p>23 point."</p> <p>24 Is that telling the people reading this</p>

<p style="text-align: right;">Page 130</p> <p>1 that they're not supposed to mention 2 cancellation? 3 MS. BRUNO: Objection as to form, 4 document speaks for itself. If you have a 5 question for him, you can ask. 6 MR. DEVITO: Well, I did have a 7 question. 8 MS. BRUNO: Do you want to read -- 9 MR. DEVITO: If you understood it -- 10 BY MR. DEVITO: 11 Q. Did you understand my question? 12 A. One more time, please. 13 Q. Sure. Is Sears discouraging sales reps 14 from mentioning cancellation policy because it's 15 not good for sales? 16 A. I wouldn't agree with that assessment 17 of why it's trained that way. We train it that 18 way because we don't want associates pressuring 19 a customer into buying and saying "And if you 20 change your mind later, you can always just 21 cancel it." We want the customer to feel good 22 about the purchase. It's not just about a 23 protection agreement relationship but the bigger 24 relationship with retail and repair and all the</p>	<p style="text-align: right;">Page 132</p> <p>1 question there. 2 MS. BRUNO: David, do you want to take 3 a break at this point? 4 MR. DEVITO: Yeah, I'm thinking about 5 it. 6 MS. BRUNO: I'm just reading your body 7 language. 8 MR. DEVITO: Yeah, you read me 9 correctly. 10 MS. BRUNO: Now is fine, yeah. 11 MR. DEVITO: I think this would be a 12 decent spot. 13 MS. BRUNO: Okay. 14 (Recess taken from 12:34 p.m. 15 to 1:24 p.m.) 16 BY MR. DEVITO: 17 Q. Good afternoon, Mr. Setzer. We're back 18 on the record, and I'd like to pick up again 19 with what we marked as Exhibit 10. 20 MS. BRUNO: David, before we continue 21 with the questions, while we were on break, 22 Dainon realized that there was -- he needs to 23 make a correction to his prior testimony as to 24 Exhibit No. 10.</p>
<p style="text-align: right;">Page 131</p> <p>1 things that Sears can do to make a customer's 2 home and life easier. 3 So we don't want to pressure and so we 4 don't want an associate saying "You should just 5 take it and then you can always cancel it 6 later." It's the same as don't plant the seed 7 or it will grow. 8 Q. So that's the reason why cancellation 9 isn't -- Sears doesn't want cancellation used as 10 a selling point so that it -- sales reps aren't 11 pressuring people into buying protection 12 agreements? 13 A. Correct. We're very -- we feel very 14 good about our cancellation policy and that it's 15 very customer friendly. So we don't hide behind 16 it. If it comes up, here's exactly what we do 17 and don't do for you, but don't bring it up in a 18 sales presentation. 19 Q. I'm a little confused by that 20 because -- 21 A. Okay. 22 Q. -- if you feel good about it, then 23 I'm -- you know, why it shouldn't be used as a 24 selling point is confusing to me, but there's no</p>	<p style="text-align: right;">Page 133</p> <p>1 MR. DEVITO: Okay. 2 MS. BRUNO: This is not the most recent 3 facilitator guide. 4 MR. DEVITO: Okay. 5 MS. BRUNO: There's one, I believe it's 6 dated 2014. We did produce it to you, so you 7 have it. 8 MR. DEVITO: Okay. 9 MS. BRUNO: If you have any questions 10 about that, feel free to ask him. I just wanted 11 to make sure it was clear on the record. 12 MR. DEVITO: Sure. 13 THE WITNESS: Thank you. 14 BY MR. DEVITO: 15 Q. I think I did ask another -- a question 16 about whether the facilitator agreement had been 17 updated to reflect the closure of the Great 18 Indoors stores. And do you happen to know 19 whether it has been? 20 A. I think it has been, but I haven't -- 21 without having that 2014 version in front of me, 22 I don't want to say yes. 23 Q. Fair enough. 24 So if you could turn to page 385 --</p>

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1 A. Okay.

2 Q. -- under where it says "Automatic
3 Merchandise Verification For PA Sales," you'll
4 see that it says "Although Sears repairs most
5 major brands, there are some brands we do not
6 service..." I'll stop there.

7 So it says "most major brands" there.
8 Is it fair to say that Sears does not service
9 all major brands?

10 A. Yes.

11 Q. And when it says "we do not service
12 some merchandise types," what does that mean?

13 A. I'm -- I think I understand the
14 question. I'm just trying to think of why
15 that's in there that way. "...we do not service
16 some merchandise types..."?

17 Okay, I guess if you could call a
18 central vacuum system a merchandise type, we
19 don't service those. So if it's a central vac
20 versus an upright or canister, as soon as we
21 learn it's a central, we're out.

22 Q. Is there a list or some other document
23 of some kind that would indicate what the
24 merchandise types are that Sears does not

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1 service?

2 A. No.

3 Q. Are there cases where Sears does
4 service a particular brand but not a particular
5 item or line of items that are made by that
6 brand?

7 A. Yeah.

8 Q. Could you give me example of that?

9 A. Craftsman lawn mowers versus Craftsman
10 power drills. We service lawn mowers. We don't
11 service cordless drills.

12 Q. And then the third sentence in that
13 paragraph says "For these reasons, we should not
14 sell Protection Agreements on any brands that
15 are not eligible for PA coverage."

16 Is this instructing salespeople not to
17 sell protection agreements on noncovered brands?

18 MS. BRUNO: Objection as to form.

19 You can answer.

20 THE WITNESS: This is -- can you repeat
21 the question, please?

22 BY MR. DEVITO:

23 Q. Is the purpose of this statement in
24 here to tell Sears' sales representatives that

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1 they should not be selling protection agreements
2 on brands that are not eligible for PA coverage?

3 A. Yes.

4 MS. BRUNO: Same objection.

5 Your answer can stand.

6 THE WITNESS: Okay.

7 BY MR. DEVITO:

8 Q. Does that indicate that sometimes Sears
9 does sell protection agreements on noncovered
10 brands?

11 MS. BRUNO: Objection as to form.

12 THE WITNESS: Yes, it's happened.

13 BY MR. DEVITO:

14 Q. Can you describe for me an example of
15 it happening?

16 A. Um, it would be if the customer doesn't
17 give us the correct brand name.

18 Q. Is that the only situation in which you
19 are aware of that occurring?

20 A. No. There can be human error. The
21 associate may not ask for the brand name, they
22 may make an assumption, they may mishear the
23 customer. Our associate could have put the
24 wrong brand in and said it was a Kenmore when in

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1 fact it's an Acme.

2 Q. How often does that occur?

3 A. Rarely, but I have no percentage I
4 could assign.

5 Q. From your personal experience, how many
6 times approximately have you encountered
7 situations where Sears sold a protection
8 agreement on a noncovered brand?

9 A. How many times have I experienced that?

10 Q. Yes.

11 A. At least dozens, I'm sure.

12 MS. BRUNO: And for clarification, do
13 you mean over the course of your time?

14 THE WITNESS: Twenty years, yeah,
15 that's the context I understood the question to
16 be.

17 BY MR. DEVITO:

18 Q. The next paragraph down says "Ciboodle
19 has an automated merchandise brand qualification
20 incorporated into its infrastructure." And then
21 the following paragraph says "By automating the
22 merchandise verification process the system will
23 prevent associates from or renewing Protection
24 Agreements on merchandise where the merchandise

35 (Pages 134 to 137)

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1 is not eligible for PA coverage."
 2 When was that automated brand
 3 qualification incorporated?
 4 A. Ooh. It's called an MMI and I don't
 5 know. I could probably find out from some --
 6 somebody that's an expert in MMI, but I don't
 7 know off the top of my head.
 8 Q. Someone at Sears might know the answer
 9 to that?
 10 A. Oh, yeah.
 11 Q. Would there be a documentary record
 12 that would reflect that?
 13 A. I don't understand -- I don't know what
 14 would qualify as a documentary record.
 15 Q. Well, I'm thinking normally of a
 16 document or some piece of information that's
 17 accessible via some sort of database or other
 18 software that Sears maintains.
 19 MS. BRUNO: I'm just going to object to
 20 the form.
 21 You can answer if you know.
 22 THE WITNESS: Probably, but I don't
 23 know for a fact. I know we maintain MMI as
 24 current. So I'm guessing that we keep versions

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1 or that somebody could trace it back to when the
 2 first one was out there. 2009-ish, that's a
 3 really rough -- I could be plus or minus --
 4 well, minus five years on that. I don't know.
 5 BY MR. DEVITO:
 6 Q. And do you know what MMI stands for?
 7 A. No. We always just call it MMI.
 8 Everybody knows what that means. It's the brand
 9 name list.
 10 Q. Was that -- this automated merchandise
 11 brand qualification thing, can I call that MMI
 12 or -- is -- is that fair?
 13 A. Yes.
 14 Q. Was the MMI instituted because Sears
 15 was having issues selling protection agreements
 16 on noneligible brands?
 17 A. I don't know that I would agree with
 18 that assessment. I would say it was put in
 19 place to further ensure that we have a brand
 20 name on record and that it's one that's -- meets
 21 our current brand list. It was an improvement
 22 process.
 23 Q. Were you involved in the institution of
 24 this MMI feature?

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1 A. No, not in this creation, no.
 2 Q. Does the use of the MMI feature prevent
 3 completely -- does it completely prevent Sears
 4 from selling protection agreements on brands
 5 that are not eligible for coverage?
 6 A. It prevents us from recording an
 7 agreement on a brand we don't cover.
 8 Completely? Again, the Kenmore/Acme thing, if
 9 the associate is either behaving fraudulently,
 10 in which case we're going to take disciplinary
 11 steps with that associate, or if the associate
 12 makes a, you know, good faith mistake, then
 13 sure, we could have recorded it that way. But
 14 we would never -- the system won't allow you to
 15 record a protection agreement on an Acme item if
 16 Acme is not an approved brand list on that MMI
 17 system.
 18 Q. Have you had situations where sales
 19 associates were acting fraudulently and
 20 recording things that they shouldn't have been?
 21 A. Yeah.
 22 Q. Approximately how many times has that
 23 happened?
 24 MS. BRUNO: Are you talking about --

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1 THE WITNESS: Since MMI, right?
 2 MS. BRUNO: I'm just clarifying.
 3 You're asking Dainon in his personal experience
 4 or that he's aware of?
 5 BY MR. DEVITO:
 6 Q. Well, you can categorize the answer
 7 however you want in time.
 8 A. I mean, since we've had MMI, have we
 9 had to discipline people for, you know, either
 10 not asking for a brand or putting the wrong
 11 brand in? Yes. I'd say less than ten times
 12 that I'm aware of. For lack of a better
 13 description, once somebody gets caught doing
 14 something like that, everybody else realizes
 15 that the company can in fact track that kind of
 16 thing and we will catch you and deal with it
 17 very dramatically and harshly and sacrificial
 18 lamb and nobody else does it.
 19 Q. So would you turn the page to page 386.
 20 A. Okay.
 21 Q. This is discussing where the brand name
 22 is blank on merchandise and it says "Before a PA
 23 can be sold, renewed, or extended on merchandise
 24 where the brand name is blank, you're required

36 (Pages 138 to 141)

<p style="text-align: right;">Page 142</p> <p>1 to update the merchandise brand name." 2 How can a situation arise where the 3 brand name is blank? 4 A. The coverage could have predated MMI or 5 the coverage could have been created by our 6 technician sales flow. They don't use Ciboodle, 7 so they don't have the same MMI creation 8 requirement, or somebody with NPS access deleted 9 the brand name for whatever reason. 10 MR. DEVITO: Would you read that answer 11 back? 12 (Record read.) 13 BY MR. DEVITO: 14 Q. Okay. So I just want to unpack that a 15 little bit, if I could. If the PA predated MMI, 16 that just -- does that mean that their -- Sears 17 did not have brand information prior to that? 18 A. As long as I've worked for the company, 19 we've had an authorized brands list, but it 20 wasn't built into the system as a required field 21 that bounced against its own check. So it was 22 more the sales associate would, yep, we're okay, 23 let me key it in. Now it's a required field in 24 the system that's automated.</p>	<p style="text-align: right;">Page 144</p> <p>1 Q. So was it possible, prior to 2 instituting the MMI, to sell or renew a PA where 3 the brand name was blank? 4 A. Prior to MMI, was it possible? Yes. 5 Q. Or where Sears otherwise did not know 6 the brand name? 7 A. Yes. 8 Q. So at some point, Sears became aware 9 that it had sold PAs where the brand was not 10 covered or it didn't know what brand the 11 customer owned; is that accurate? 12 MS. BRUNO: Objection as to form. 13 BY MR. DEVITO: 14 Q. Well, let me break it into two pieces. 15 So at some point Sears became aware that it had 16 sold PAs where the brand was not covered; is 17 that correct? 18 MS. BRUNO: Same objection. 19 THE WITNESS: I don't -- I don't -- I'm 20 trying to understand in the context of MMI and I 21 don't. Help me understand. 22 BY MR. DEVITO: 23 Q. Well, you could divorce it from MMI -- 24 A. Oh, okay.</p>
<p style="text-align: right;">Page 143</p> <p>1 So if it was created prior to that, 2 somebody left it blank or put a period as a 3 placeholder, you know, that kind of thing 4 without checking the list, the agreement could 5 have been recorded. Once we put MMI in, we said 6 it has to be from this drop-down list also so 7 there's not -- so you don't type it in as 8 "Kemmore" instead of "Kenmore," typos. 9 Q. So prior to putting in the MMI, there 10 could have been potentially a lot of situations 11 where Sears didn't have the brand information in 12 its system; is that right? 13 MS. BRUNO: Objection as to form. 14 You can answer. 15 THE WITNESS: Yeah, I -- define "a 16 lot," but yeah, I mean, sure, yes, it's 17 possible. 18 BY MR. DEVITO: 19 Q. Well, you tell me what the reality was. 20 Were -- 21 A. I would say the majority of coverage 22 had a brand name listed because we would always 23 ask, but it wasn't as good as it is now because 24 it wasn't a required field.</p>	<p style="text-align: right;">Page 145</p> <p>1 Q. -- I guess. I'm not necessarily 2 limiting it to MMI but it -- 3 A. Okay. 4 Q. You tell me if there have been 5 situations since you put in MMI where you've 6 still learned that you'd have a PA out there 7 where the brand name is blank. 8 A. Yeah. 9 Q. And what does Sears do when it becomes 10 aware of that? Does it contact the customer? 11 A. No. 12 Q. So I'm assuming then, since it's 13 happened since you put in MMI, then it certainly 14 happened before you put in MMI that you would 15 become aware that there'd be a PA out there 16 where the brand name was blank; is that correct? 17 MS. BRUNO: Just object to form. 18 If you followed it, you can answer. 19 THE WITNESS: Okay. 20 Yes. 21 BY MR. DEVITO: 22 Q. And similar but slightly different 23 question, Sears has at times become aware that 24 it had sold PAs where it just did not know what</p>

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<p style="text-align: right;">Page 146</p> <p>1 brand the customer owned; is that correct?</p> <p>2 A. Yes.</p> <p>3 Q. And when it becomes aware of that, it</p> <p>4 does not contact the customer; is that correct?</p> <p>5 MS. BRUNO: Objection to form.</p> <p>6 But you can answer if you understand.</p> <p>7 THE WITNESS: I want to give you a</p> <p>8 straightforward answer, but I need to qualify it</p> <p>9 a little bit. I'm sorry.</p> <p>10 BY MR. DEVITO:</p> <p>11 Q. Sure.</p> <p>12 A. We don't have some audit process that</p> <p>13 searches the entire database for blank fields.</p> <p>14 So the only way we'd become aware of that is</p> <p>15 either a sales associate working that customer's</p> <p>16 file and seeing, "Oh, my gosh, why is this</p> <p>17 blank? Let me talk to the customer and ask</p> <p>18 about it," or a technician out there trying to</p> <p>19 work on something and get parts to fix it and</p> <p>20 those kind of situations. So the "become aware</p> <p>21 of it" and do we contact you, we would only</p> <p>22 become aware of it if we were in contact with</p> <p>23 you because nobody's searching millions of</p> <p>24 records.</p>	<p style="text-align: right;">Page 148</p> <p>1 little bit about this, but it says "When pricing</p> <p>2 a Protection Agreement, you may be required to</p> <p>3 update the existing brand name if it is</p> <p>4 unrecognized in our verification tables (also</p> <p>5 known as the MMI tables) due to misspelling,</p> <p>6 et cetera."</p> <p>7 So first of all, what are the</p> <p>8 verification tables?</p> <p>9 A. It's literally a list by merchandise</p> <p>10 type of the brands that are eligible. So, I</p> <p>11 mean, we have a kind of an Excel version of it</p> <p>12 that just lists, you know, washer, dryer,</p> <p>13 washer/dryer combo systems, and under each of</p> <p>14 those are all of the brands that would be</p> <p>15 eligible for coverage under one of those product</p> <p>16 types.</p> <p>17 Q. And are those lists given out to</p> <p>18 salespeople?</p> <p>19 A. They're available on the PA Resource</p> <p>20 Center. So we -- they can access it</p> <p>21 electronically.</p> <p>22 Q. And how could a situation arise where</p> <p>23 the brand name is not recognized in the system</p> <p>24 on an existing PA?</p>
<p style="text-align: right;">Page 147</p> <p>1 Q. Sure.</p> <p>2 A. Does that --</p> <p>3 Q. Yeah, I understand what you're saying.</p> <p>4 A. Okay.</p> <p>5 Q. So my question is then --</p> <p>6 A. Okay.</p> <p>7 Q. -- by virtue of the fact that it</p> <p>8 becomes aware of it in through the means that</p> <p>9 you just described --</p> <p>10 A. Okay.</p> <p>11 Q. -- Sears then must know that it -- in</p> <p>12 its millions of contracts or however many there</p> <p>13 are -- bound to be other similar situations,</p> <p>14 right?</p> <p>15 MS. BRUNO: Objection as to form.</p> <p>16 You can answer if you know.</p> <p>17 THE WITNESS: I mean, I'd agree with</p> <p>18 that in concept, yeah. If I come across one</p> <p>19 file, there's probably -- it's probably happened</p> <p>20 somewhere else with the scale of Sears.</p> <p>21 BY MR. DEVITO:</p> <p>22 Q. I'll have you flip to the next page.</p> <p>23 A. (Witness complying.)</p> <p>24 Q. And I think we probably discussed a</p>	<p style="text-align: right;">Page 149</p> <p>1 A. I think one thing that's important to</p> <p>2 remember is that this version that we're looking</p> <p>3 at is, to the best of my recollection, at a time</p> <p>4 period where MMI was fairly new and with</p> <p>5 five-year contracts. We were in kind of that</p> <p>6 clean-up, move over mode, where it might have</p> <p>7 been in the system as "Kemnore" because somebody</p> <p>8 had free-form typed it. In today's call center</p> <p>9 environment, it's much less frequent that we</p> <p>10 would come across a typo because it's a</p> <p>11 drop-down, select from a list, not a free-form</p> <p>12 typing.</p> <p>13 Q. Right.</p> <p>14 A. So keep in mind what was going on in</p> <p>15 2011 is what kind of makes this pertinent, and</p> <p>16 that is that yeah, it would have been misspelled</p> <p>17 or it would have been -- you know, because it</p> <p>18 had been free-form typed in there by some call</p> <p>19 center agent or -- inbound or outbound really.</p> <p>20 Q. So generally speaking, this is</p> <p>21 referring to misspellings of the brand name?</p> <p>22 A. Yes.</p> <p>23 Q. What else could it be referring to?</p> <p>24 A. Well, again, at the time of this, it</p>

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1 could have been that we -- somebody had covered
2 an item that they should have checked against
3 the piece of paper but they didn't, so they
4 covered an Acme and now the system's going to
5 go: No, I see it as an Acme and I say no, you
6 cannot cover that because it's not one of the
7 drop-down list that's eligible.

8 Q. Now, if you'd just flip to the last
9 page we have here --

10 A. Okay.

11 Q. -- which is page 1199. I have it in my
12 outline here. I can't seem to find it on the
13 page, but I'm sure it's in there. It says
14 "Protection Agreement pricing is based, in part,
15 on the age of the merchandise owned. The age is
16 determined either by merchandise purchase date
17 or delivery/installation date."

18 A. Yeah. It's like the fifth paragraph
19 under "How To Make Pricing Work For You."

20 Q. Thank you.

21 A. Sure.

22 Q. Is there a different price for each
23 year of aging?

24 A. There can be -- our tables have

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1 1 through 15, which represents the age of the
2 product. So the price will max out at 15 years
3 of age and the 16th, 17th, 18th year of age of
4 that product will be the same price but with all
5 the merchandise codes and I can't guarantee that
6 the two-year to the three-year of age changes on
7 every merchandise code. Some of them may be
8 stable for a couple of years. Then it goes --
9 but directionally, our protection agreements
10 always get more expensive per year as the item
11 becomes older.

12 Q. And they are -- for each product,
13 there's a pricing table that has this sort of
14 aging of the pricing?

15 A. Even more specific than the product,
16 it's what we call a merchandise code. So if
17 "product" you mean refrigerator, to me, I would
18 say: Well, there's a reffridge IM for ice maker,
19 reffridge SS for side-by-side reffridge, BF for
20 bottom freezer, and those would each have
21 potentially their own pricing structure.

22 Q. Okay. But that is not brand-specific?

23 A. It is not brand-specific. We do have a
24 few merchandise codes that represent a very

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1 specific brand in certain circumstances, but for
2 the most part, it's just a refrigerator is a
3 refrigerator. We don't care if it's a Kenmore
4 or a Maytag or a GE.

5 Q. And it says "The age is determined by
6 purchase date or delivery installation date."
7 And how does Sears know these dates if the item
8 wasn't purchased at Sears? Is that just the
9 customer representation to them?

10 A. Exactly, yes.

11 MR. DEVITO: What are we at? 11?

12 THE REPORTER: Yes.

13 (Exhibit 11 was marked for
14 ID.)

15 BY MR. DEVITO:

16 Q. So you've been handed what's been
17 marked as Exhibit 11. Are you familiar with
18 this document?

19 A. Yes.

20 Q. Is this the verification table that
21 we've been discussing?

22 A. Kind of.

23 Q. Okay.

24 A. It's the brands list that's on the

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1 PA Resource Center. This is not MMI. MMI is a
2 software program maintained elsewhere, but they
3 match. The content of both would be the same.

4 Q. So the information that MMI would spit
5 out is the same as what's on the PA Resource
6 Center which is this document?

7 A. Yes.

8 Q. Is there some way that those two things
9 speak to each other so that a change made to one
10 automatically is made to the other?

11 A. Nope.

12 Q. So if a change is being made, someone
13 has to separately input it to each of those two
14 things?

15 A. Yes.

16 Q. And is this a comprehensive list of all
17 the brands that Sears will cover in an MPA?

18 A. (Reviewing document.)

19 The only qualification I have to that
20 as being a yes/no answer is I don't see a
21 revision date on here. So I don't know by heart
22 which version I'm looking at. But whenever this
23 would have been printed out and pulled from,
24 this would have been the representation of that,

39 (Pages 150 to 153)

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1 yes. There's not anything else anywhere that we
2 would maintain. If there's a newer version
3 where a brand has been added or taken off, I
4 don't know by heart.

5 Q. Okay. Well, that's my next question,
6 is --

7 A. I don't see a revision date on here to
8 be able to tell you.

9 Q. How often is this updated?

10 A. Completely as brands come and go in
11 coordination with product engineers and repair
12 services and, you know, we want this list to be
13 as big as possible, so it just totally depends
14 on when we have to take things off or we get to
15 add things on.

16 Q. Is there supposed to be a revision date
17 on here?

18 A. (Reviewing document.)

19 Probably. I don't know if it just
20 didn't print or if it's missing from this
21 version. We don't typically -- to try to answer
22 your question more thoroughly, internally as a
23 business, we don't print this, because I don't
24 want to have to try to go: Give me your old

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1 version, give me your old version, give me your
2 old version, and then I risk an associate
3 talking to a customer with out-of-date
4 information.

5 Absolutely anytime they need it, they
6 can just use MMI in Ciboodle. Ciboodle will
7 tell you what you need to know, but if you want
8 to fact-check the information, you can go to the
9 PA Resource Center online and look, and only the
10 most current version will be saved online as the
11 reference available. So I think we have a
12 revision date on the website page and maybe it
13 doesn't view when you print it, but the revision
14 is just always whatever's up there.

15 Q. You think there would be a way to tell
16 the revision date of this document?

17 A. Yes.

18 Q. And the prior versions of this document
19 are saved somewhere?

20 A. Yes.

21 Q. And they should have a revision date on
22 them so you could tell which one was in effect
23 at each particular time?

24 MS. BRUNO: Objection as to form.

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1 You can answer.

2 THE WITNESS: Going back to probably at
3 least 2010, yes.

4 BY MR. DEVITO:

5 Q. And how come that time is -- how come
6 you cut it off at that time?

7 A. Because that's when I made this.

8 Q. Okay. Good to know.

9 A. It was -- I took the list that was
10 already on there and made it into an Excel form
11 so I could change it, because I inherited it
12 from the previous guy.

13 Q. Okay. Then explain to me what it was
14 that you inherited.

15 A. The web page. I didn't have the
16 modifiable version, so I had to grab the
17 existing version off the web page that was just
18 a PDF, and I needed to add or take off -- I
19 don't even remember which it was at that time,
20 but I needed to modify this list. So I dumped
21 it into Excel so I could modify it from then
22 going forward in this marketing role.

23 Q. So prior to you creating this format
24 for this eligible brands list, there was a PDF

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1 document that had a list of brands on it? Is
2 that what you're saying?

3 MS. BRUNO: Object to --

4 THE WITNESS: That was the only version
5 that I -- sorry.

6 MS. BRUNO: That's okay. I was just
7 stating an objection as to form.

8 But you can answer.

9 THE WITNESS: That was the only version
10 I had access to. So to do what I needed to do
11 quickly and easily, I just grabbed the PDF I
12 knew was current and converted it. There had to
13 be some other Word or Excel document somewhere
14 that somebody used to build the PDF, but it was
15 before me and it wasn't -- at the time it wasn't
16 worth chasing down the original source. It was
17 easy enough just to copy and paste.

18 BY MR. DEVITO:

19 Q. Was this list something you dealt with
20 in your prior jobs, prior to the 2010 job?

21 MS. BRUNO: Objection as to form.

22 You can answer.

23 THE WITNESS: Used it, yes. Was not an
24 administrator of it, was a viewer of it.

40 (Pages 154 to 157)

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1 BY MR. DEVITO:

2 Q. Yeah. And so could you just describe
3 for me generally what it looked like then before
4 you reformatted it?

5 **A. Just like this (indicating to
6 document).**

7 Q. So you just literally put it into an
8 Excel spreadsheet so that you could change it?

9 **A. Yes.**

10 Q. Now, if we flip to the last page, which
11 is SEARS 522, at the bottom there it says
12 "Sears, Kmart, the Great Indoors, and High-End
13 Merchandise." Again, I -- we talked a little
14 bit about the Great Indoors which has closed.

15 Does that either -- do you know whether
16 this has been updated to reflect the fact that
17 the Great Indoors closed or that maybe it's
18 still relevant because something could have been
19 sold there? Do you know whether -- does that
20 suggest to you at all the date of this document
21 is what I'm trying to understand.

22 MS. BRUNO: Objection as to form.

23 If you understand, you can answer.

24 THE WITNESS: Okay. To my knowledge,

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1 **A. Yeah.**

2 Q. Was that something that Sears was aware
3 of being an issue?

4 MS. BRUNO: Objection as to form.

5 You can answer.

6 THE WITNESS: I would say we were aware
7 of the gap, yes.

8 BY MR. DEVITO:

9 Q. And this indicates that Thermador is a
10 brand that is not -- not eligible; is that
11 correct?

12 **A. (Reviewing document.)**

13 **Not eligible for protection agreement
14 renewal?**

15 Q. Yes. Well --

16 **A. Agreed.**

17 Q. Is there more to that answer that --

18 **A. Well, I mean, it's on the list as an
19 authorized brand. So I can't say it's not
20 eligible, but it's eligible under the
21 circumstances of it was bought at the store at
22 point of sale, and then there's the whole next
23 paragraph that we've been discussing that says
24 why it wouldn't be eligible for future coverage.**

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1 this document is still just about as current --
2 this -- that section still exists on the current
3 document, yes.

4 BY MR. DEVITO:

5 Q. Okay. And it would still say The Great
6 Indoors on it, correct?

7 **A. Yes.**

8 Q. At the bottom, it says "Currently
9 bundled items cannot be bundled, upsold, or
10 renewed.

11 By "currently covered," that's
12 referring to items that are already listed on an
13 existing PA?

14 **A. Yes.**

15 Q. And the -- does this then mean that if
16 there's an existing PA with one of these brands
17 on it, that that PA should not be renewed?

18 **A. Correct.**

19 Q. And are you aware of any situations
20 where such a PA was renewed anyway?

21 **A. No.**

22 Q. Was it possible, before you put in the
23 MMI, that a purchase agreement could have been
24 renewed with a noneligible brand on it?

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1 **So eligible, period? Yeah, under those
2 circumstances. Eligible under the rest as
3 described? No.**

4 Q. Okay.

5 **A. Sorry if I misunderstood. I just
6 wanted to make sure I answered thoroughly.**

7 Q. I appreciate that.

8 And I guess the way to tell -- I mean,
9 this is not a static list, right? This changes
10 over time; is that right?

11 **A. Yes.**

12 Q. So it's possible that some of the
13 brands that are listed here were once eligible
14 for renewal and then became ineligible for
15 renewal; is that right?

16 **A. Specifically from the Sears, Kmart,
17 Great Indoors section down?**

18 Q. Yes.

19 **A. It's possible, although I can't think
20 of any instances. That high-end list is pretty
21 static in terms of it's either high end or it's
22 not. It's either eligible or it's not. I can't
23 think of a time where something got downgraded
24 from high end to normal.**

41 (Pages 158 to 161)

<p style="text-align: right;">Page 162</p> <p>1 Q. Is the list of high-end brands, are 2 these things that Sears still sells generally? 3 MS. BRUNO: Objection as to form. 4 If you know, you can answer. 5 THE WITNESS: I don't think so, but I 6 don't -- I can't say for sure, especially with 7 Sears.com inventory and those kind of things. 8 I'm not sure if we sell some of these or not. 9 MR. DEVITO: This is 12. 10 (Exhibit 12 was marked for 11 ID.) 12 BY MR. DEVITO: 13 Q. You've been handed what's been marked 14 as Exhibit 12. At the top it says "Brand List - 15 Sears, HA/HVAC, Non-Serviceable Brands." It's 16 Bates-labeled SEARS 336. Are you familiar with 17 this document? 18 A. I'm not. 19 Q. I guess, then, you don't know when this 20 document was created? 21 A. I do not. 22 Q. And you don't know whether there are 23 prior versions of this list that have different 24 information on them?</p>	<p style="text-align: right;">Page 164</p> <p>1 plenty of experience to help you along in that 2 effort. 3 At the top it says this list 4 "...contains the names of product brands that 5 Sears will no longer provide In Warranty repair 6 service." The way that's written sort of 7 suggests that Sears used to provide in-warranty 8 repair service on these brands; is that fair? 9 MS. BRUNO: Objection as to form. 10 THE WITNESS: It seems -- that's how I 11 would read it as well, yeah. I'm reading it for 12 the first time with you, but yeah, that would 13 imply a change. 14 BY MR. DEVITO: 15 Q. And do know whether this means Sears 16 provides some other kind of service on these 17 brands besides in warranty? 18 MS. BRUNO: Same objection. 19 THE WITNESS: (Reviewing document.) 20 I don't think we provide collect call 21 service on these brands either, but we -- we may 22 possibly. That's not my field of expertise 23 on -- the repair technician's total coverage. 24 I'm specialized to protection agreements.</p>
<p style="text-align: right;">Page 163</p> <p>1 A. Correct, I do not. 2 Q. And I take it, then, you don't know 3 where this document was collected from? 4 A. Do you want me to give it my best guess 5 based on -- 6 MS. BRUNO: I don't want you to 7 speculate -- 8 THE WITNESS: Okay. 9 MS. BRUNO: -- but if there's 10 information on here that you think provides some 11 information, you can respond. 12 THE WITNESS: "Not create service or 13 transfer the customer to technical specialists," 14 that makes me think this is a document for the 15 customer care network creating service orders 16 and this is directing them on whether or not the 17 customer should go to that text spec team for 18 phone triage or should be created a collect call 19 or should be transferred to the original 20 equipment manufacturer, but that's me trying to 21 use experience to guess where this came from, 22 but that's not a factual statement. 23 BY MR. DEVITO: 24 Q. I appreciate that. I can tell you have</p>	<p style="text-align: right;">Page 165</p> <p>1 BY MR. DEVITO: 2 Q. But that would be the alternative, 3 would be collect call service? 4 MS. BRUNO: Objection as to form. 5 THE WITNESS: Okay, yeah, collect call, 6 in warranty, PA. 7 BY MR. DEVITO: 8 Q. Okay. 9 A. Those would be the three 10 classifications of a service order. 11 Q. Is there a distinction between an 12 eligible brand and a serviceable brand? 13 A. Um, is eligible on here or are you just 14 talking from our conversations? 15 Q. I'm just referring to Exhibit 11 and 16 our conversations. 17 A. Oh, okay. Eligible brand means it's a 18 brand that's eligible for protection agreement 19 coverage. Serviceable brand means it may be 20 something that we will service under warranty or 21 under a collect call, but we are not willing to 22 sell a protection agreement on that item because 23 of that brand. 24 Q. And how -- or -- okay. Is it possible</p>

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1 for a brand to be both eligible and
2 nonserviceable?

3 **A. No. I can't think of -- or at least I**
4 **can't think of an instance where that's ever**
5 **happened.**

6 Q. So we were looking at the eligible
7 brands list -- or the -- I think -- correct me
8 if I'm wrong, but if you go -- looking at the
9 high-end merchandise --

10 **A. Okay.**

11 Q. -- you told me that the brands on here
12 are eligible but classified as high end, right?

13 **A. Yeah.**

14 Q. If you take Thermador as an example,
15 it's eligible but high end on Exhibit 11 and
16 it's nonserviceable on Exhibit 12.

17 **A. It's nonserviceable under the**
18 **in-warranty repair.**

19 Q. Okay. So it's serviceable under a PA?

20 **A. In this particular situation where they**
21 **bought the PA at the retail store, yes.**

22 Q. So Sears will, for the high-end items,
23 still sell a PA at point of sale on the items
24 listed in there but that's it; is that right?

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1 **A. "That's it," meaning?**

2 Q. Meaning they won't sell an aftermarket
3 PA and they won't renew.

4 **A. Fair statement, yes.**

5 Q. And has it always been the case that
6 Sears would not renew PAs for high-end
7 merchandise listed on here (indicating to
8 document)?

9 **A. To my knowledge, yes, that's always**
10 **been the case.**

11 Q. Going back to Exhibit 12 -- I know
12 you're not familiar with it, but are there any
13 brands that are not on here that you know Sears
14 doesn't service?

15 MS. BRUNO: Objection as to form. This
16 is about in-warranty service. So I think your
17 question is going far broader than that, but --

18 MR. DEVITO: I'm happy to limit it.
19 BY MR. DEVITO:

20 Q. Are there any brands not on here that
21 you know Sears doesn't provide in-warranty
22 service for?

23 **A. Yeah, NordicTrack would be the example**
24 **that comes to mind.**

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1 Q. Does NordicTrack qualify as a home
2 appliance?

3 **A. Oh, good catch. No. I wouldn't call**
4 **it a home appliance. Recreational.**

5 Q. Okay. So it -- so then let's limit it
6 to what this says --

7 **A. Okay.**

8 Q. -- at the top of the list which is --

9 **A. HA/HVAC.**

10 Q. Right. Are there any of those brands
11 that you know that Sears does not provide
12 in-warranty service for but that are not on
13 here?

14 **A. I don't know.**

15 Q. Okay. I'd like to now sort of ask you
16 some questions about Sears' recordkeeping and IT
17 systems. You'll probably have to bear with me a
18 little bit. I'm not a technology expert, but
19 we've talked about the Ciboodle. I'll call it a
20 database. I don't know if that's a proper term.

21 **A. I wouldn't classify it that way. It**
22 **doesn't actually store the records.**

23 Q. Okay.

24 **A. It's a desktop interface.**

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1 Q. And what does store the records?

2 **A. NPS.**

3 MS. BRUNO: You know, can we take a
4 break? We can do this whole thing. I just want
5 to take a quick break to use the bathroom.

6 MR. DEVITO: Sure.

7 (Recess taken from 2:15 p.m.
8 to 2:20 p.m.)

9 BY MR. DEVITO:

10 Q. Okay. So NPS is where the information
11 in Ciboodle is stored; is that -- did I
12 understand that right?

13 **A. I would say NPS stores the data.**
14 **Ciboodle is the user interface for agents.**

15 Q. And so I'm just going to stay sort of
16 general.

17 What other kind of systems does Sears
18 use with respect to PAs?

19 MS. BRUNO: Objection as to form.

20 If you understand it, you can answer.

21 THE WITNESS: NPS, MMI, Ciboodle, Case
22 Ciboodle, those are the -- the ones that come to
23 mind.

24 BY MR. DEVITO:

43 (Pages 166 to 169)

<p style="text-align: right;">Page 170</p> <p>1 Q. So MMI is a separate software that</p> <p>2 interfaces with Ciboodle; is that right?</p> <p>3 A. Yes.</p> <p>4 Q. And could you tell me what Case</p> <p>5 Ciboodle is?</p> <p>6 A. It's a slightly newer version of</p> <p>7 Ciboodle that added some functionality around</p> <p>8 creating case numbers in a customer record to</p> <p>9 track something that requires more follow-up</p> <p>10 like a rental reimbursement or food loss or the</p> <p>11 replacement authorization, those kind of things.</p> <p>12 So it was more like that PABA group we were</p> <p>13 talking about earlier, they use Case Ciboodle.</p> <p>14 Q. Is there a particular vendor that makes</p> <p>15 Ciboodle?</p> <p>16 A. Yeah. They are from Scotland. What</p> <p>17 the heck?</p> <p>18 MS. BRUNO: I don't know.</p> <p>19 THE WITNESS: I don't know why I'm</p> <p>20 looking at you. Oh, Sword? No.</p> <p>21 BY MR. DEVITO:</p> <p>22 Q. If you don't know, that's okay.</p> <p>23 A. Yeah.</p> <p>24 Q. I don't expect everyone to have</p>	<p style="text-align: right;">Page 172</p> <p>1 Ciboodle? I assume one of the ways is from the</p> <p>2 in-store sale of an item?</p> <p>3 A. Perfect example. Retail can create a</p> <p>4 record on behalf of a new customer or add</p> <p>5 merchandise to an existing customer's record. A</p> <p>6 call center agent could create a file or modify</p> <p>7 file or a customer shopping online.</p> <p>8 Q. So in sort of all three of those</p> <p>9 different sales channels, those all interact</p> <p>10 with Ciboodle?</p> <p>11 A. They interact with NPS.</p> <p>12 Q. Okay.</p> <p>13 A. Ciboodle is just the app- -- it's just</p> <p>14 the desktop application. So --</p> <p>15 Q. So I guess a customer shopping online</p> <p>16 has obviously no interaction with Ciboodle.</p> <p>17 A. Correct.</p> <p>18 Q. So then the salespeople in a retail</p> <p>19 store have access to it; is that right?</p> <p>20 A. No, that is not.</p> <p>21 Q. Okay. How -- what are they doing to --</p> <p>22 how do they -- how would they go about assessing</p> <p>23 customer information? You know, if someone</p> <p>24 walks in the store, how do they figure out what</p>
<p style="text-align: right;">Page 171</p> <p>1 memorized all the Scottish software vendors.</p> <p>2 A. Yeah, it was a particular firm.</p> <p>3 Q. And how does information get inputted</p> <p>4 into Ciboodle? If you need to use an example to</p> <p>5 explain that, go ahead.</p> <p>6 A. I'm not sure I understand the context</p> <p>7 of the question.</p> <p>8 Q. Well, I'm not sure that there is a</p> <p>9 whole lot of context to it, but I'm just trying</p> <p>10 to understand. What kind of information is</p> <p>11 available through Ciboodle? Let's start there.</p> <p>12 A. Okay. Customer name and details,</p> <p>13 address, phone, e-mail, shop-your-way number,</p> <p>14 agreement, history, merchandise list, service</p> <p>15 order history and some interaction details of</p> <p>16 call center to customer calls.</p> <p>17 Q. What is a shop-your-way number?</p> <p>18 A. It's the Sears loyalty program, like</p> <p>19 a -- I don't know, I'm trying to think of</p> <p>20 another example. Walgreens, punch in your phone</p> <p>21 number, swipe your little Walgreens card and get</p> <p>22 a discount. It's a points loyalty program.</p> <p>23 Q. So how -- what are the ways in which</p> <p>24 that customer information can get inputted into</p>	<p style="text-align: right;">Page 173</p> <p>1 they already own and whatnot?</p> <p>2 MS. BRUNO: This is the retail agent?</p> <p>3 MR. DEVITO: Yes.</p> <p>4 THE WITNESS: They wouldn't know what</p> <p>5 the customer already owns.</p> <p>6 BY MR. DEVITO:</p> <p>7 Q. And they wouldn't be able to figure</p> <p>8 that out or they would have to call in?</p> <p>9 A. They would have to call in and we would</p> <p>10 talk to the salesperson just the same way we</p> <p>11 would with a customer to say here's what we've</p> <p>12 got, but they don't have access to Ciboodle, no.</p> <p>13 Q. Okay. If a new sale was being made in</p> <p>14 a store to a new customer, how does the</p> <p>15 information about that customer make its way</p> <p>16 into Ciboodle?</p> <p>17 A. The retail salesperson would have,</p> <p>18 through the register, entered the customer's</p> <p>19 name, address, and phone number, and then when</p> <p>20 they'd ring up the item, that would have a</p> <p>21 division and item number, like SKU. That</p> <p>22 information would be packaged and there's a feed</p> <p>23 between those two systems, between the retail</p> <p>24 register point of sale and Caboodle/NPS to</p>

44 (Pages 170 to 173)

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1 **update our records.**

2 Q. And so that's going on every day. New
3 information is from -- from new customers is
4 going into Ciboodle from retail stores?

5 **A. Yeah. It's a nightly batch process,**
6 **yes.**

7 Q. What kind of reports can be generated
8 from -- now I don't know whether I should be
9 referring to Ciboodle or NPS, but can you, for
10 example, have -- do a search on a customer and
11 have it spit you out every transaction Sears has
12 had with that customer?

13 MS. BRUNO: Objection as to form.

14 If you understand the question, you can
15 answer.

16 THE WITNESS: I mean, yes, I can search
17 by customer or, you know, relevant details to
18 find that customer record. Have it spit out
19 every transaction? No. I would have a view of
20 their serviceable merchandise that is, as far as
21 we know, currently owned, hasn't been deleted,
22 all those variables, but I wouldn't know that
23 they bought a cordless drill.

24 BY MR. DEVITO:

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1 software interface that would allow you to do
2 that; is that -- is that true?

3 **A. To tell you how many active protection**
4 **agreements or how many ever or those kind of**
5 **things?**

6 Q. Yes.

7 **A. Yes.**

8 Q. Does that have a name?

9 **A. In -- I would call it -- me and the**
10 **people that would work with that would call it**
11 **the data warehouse.**

12 Q. And can the data warehouse be searched
13 by date? In other words, could you tell how
14 many MPAs existed on January 1st, 2012 versus
15 January 1st, 2015?

16 MS. BRUNO: Objection as to form.

17 If you know the answer, you can go
18 ahead.

19 THE WITNESS: I don't know, but I would
20 think yes. I think we could probably figure out
21 a way to write a code to do that.

22 BY MR. DEVITO:

23 Q. And do you know how far back in time
24 the information in the data warehouse goes?

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1 Q. Can you use -- again, I'm -- can you
2 tell me which -- whether I'm better off
3 referring to the, you know, place where -- I
4 guess I'm referring to the place where the
5 information is stored. So can you use NPS to
6 determine how many MPAs Sears has at any given
7 time?

8 **A. No.**

9 Q. Is there any way to determine that?

10 **A. Yes.**

11 Q. How would you do that?

12 **A. A query of what we --**

13 MS. BRUNO: I'm sorry. I'm just going
14 to object to form.

15 You can answer if you know.

16 THE WITNESS: A query of the data
17 warehouse is what we would use.

18 BY MR. DEVITO:

19 Q. And what is -- when you say "data
20 warehouse," what do you mean?

21 **A. It's the -- the server behind NPS, I**
22 **guess, is the best -- to my knowledge is how I**
23 **would describe it.**

24 Q. But there's -- there's some kind of

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1 **A. I would say at least 20 years.**

2 Q. Can you use the data warehouse or NPS
3 to tell you how much Sears charged for a
4 particular MPA?

5 MS. BRUNO: Objection as to form.

6 If you understand, you can answer.

7 THE WITNESS: Yes.

8 BY MR. DEVITO:

9 Q. Can you use NPS or the data warehouse
10 to tell you whether claims were made or repair
11 requests were made under a particular MPA?

12 **A. Service order information, yes. Um...**
13 **yeah. If that's -- when you say "claims,"**
14 **service order?**

15 Q. Yes.

16 **A. Yes. Then yes.**

17 Q. What information can it tell you about
18 service orders?

19 MS. BRUNO: Objection as to form. What
20 do you mean by that?

21 BY MR. DEVITO:

22 Q. If -- if it can tell you that the
23 customer requested service on -- I presume on a
24 particular product, can it do that?

45 (Pages 174 to 177)

<p style="text-align: right;">Page 178</p> <p>1 A. Yeah. Data warehouses, you know, we 2 would use that to query macro things. NPS, we 3 would use that to look up Bob's file. 4 Q. Okay. That helps. 5 A. So if we're in Bob's file, I can look 6 to see that there's three service orders on that 7 refrigerator. One of them was a PM check, one 8 of them was a broken ice maker, you know, that 9 kind of thing. 10 Q. And can you see how each of those 11 service orders was resolved? 12 A. Yes. 13 Q. And will it tell you the date when the 14 service order was made? 15 A. Yes. 16 Q. And will it tell you specifically what 17 product was involved? 18 A. Yes. 19 Q. Will it tell you the identity of the 20 person, the service rep who dealt with it? 21 MS. BRUNO: Objection as to form. 22 But if you understand... 23 BY MR. DEVITO: 24 Q. Like, is there a code in there or a</p>	<p style="text-align: right;">Page 180</p> <p>1 refund was issued? 2 A. Yes. 3 Q. Can it tell you the format in which the 4 refund was issued, meaning you sent them a 5 check, they refunded a credit card? 6 A. Yes. 7 Q. When, if you know, did Sears begin 8 using NPS? 9 A. Late '80s. 10 Q. From your face -- 11 A. Late '80s. 12 Q. -- it seems like a long time ago. 13 A. '84, '88, something like that. 14 Q. I assume that the -- it's been updated 15 a lot over time; is that correct? 16 A. No. 17 MS. BRUNO: Objection as to form. 18 THE WITNESS: Oh, okay. 19 MS. BRUNO: It's okay. 20 BY MR. DEVITO: 21 Q. Go ahead. 22 MS. BRUNO: It's okay. You can answer 23 if you know. 24 BY MR. DEVITO:</p>
<p style="text-align: right;">Page 179</p> <p>1 name or something like that that says 2 "Technician number 247 went out to the 3 customer's house"? 4 A. Yes. 5 Q. And will it tell you what -- I mean, I 6 sort of asked this already, but what was done, 7 whether a repair was done or a replacement was 8 authorized? 9 A. Yes. 10 Q. Can these systems, either the data 11 warehouse or NPS, tell you Sears' profit 12 information with respect to MPAs? 13 MS. BRUNO: Objection as to form. 14 BY MR. DEVITO: 15 Q. And let me be a little more specific. 16 Like, can Sears tell how much -- ah -- strike 17 that. 18 Can NPS tell you whether any kind of 19 refund was issued on a particular MPA? 20 A. Yes. 21 Q. Can it tell you the amount of the 22 refund? 23 A. Yes. 24 Q. Can it tell you the date when the</p>	<p style="text-align: right;">Page 181</p> <p>1 Q. So judging by your answer, it's -- 2 would you characterize it as like a relatively 3 primitive system? 4 A. Yes, in my opinion, it would be. 5 Q. Can you sort of put any color on that? 6 Describe it for me? 7 A. I think of it as primitive because it's 8 really old -- it's a black and green mainframe 9 system like how computers used to be 10 monochromatic. Nothing on there is 11 mouse-driven. It's tab from field to field, and 12 if you don't type within the fields, the screen 13 locks up and you have to hit "escape." It's all 14 menu number-driven, so it's -- there's no links, 15 there's no -- it's an old system, but it's very 16 stable and it houses a lot of really good 17 information. So we keep it in the background. 18 Q. We've been talking a little bit about 19 how Sears keeps track of service requests. Is 20 that -- how is that done and let me try to be a 21 little more specific. Like, the call 22 representative who receives the call, what do 23 they do to make a record of the repair request? 24 MS. BRUNO: Objection to form.</p>

46 (Pages 178 to 181)

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1 But if you understand, you can answer.

2 THE WITNESS: Okay.

3 They would be using Ciboodle and you
4 would call in and say I -- "My refrigerator's
5 not working." We would pull up your file,
6 identify the refrigerator, ask you some
7 clarifying questions, make sure we are talking
8 about the same -- the refrigerator you're
9 thinking of as broken is the one I'm looking at
10 on my screen.

11 I would ask you some questions, those
12 triage questions we talked about, but ultimately
13 if we're talking about creating an actual
14 service order with the intent of dispatching a
15 technician, I would ask you what the symptoms
16 are, what it's doing. I would put it in as the
17 service request. We would talk about dates and
18 times of when I would have technicians in your
19 market. You would tell me which one works for
20 you. And I would schedule it and I would say:
21 We'll see you -- the tech will call you before
22 he arrives on such and such a day, between this
23 time and that time and that creates a service
24 order. It's an eight digit service order number

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1 that is assigned and stored within that
2 customer's file record that's both in Ciboodle
3 and stored really in NPS.

4 BY MR. DEVITO:

5 Q. What if it doesn't get to the point of
6 dispatching a technician? Is there a record
7 kept of a call that's resolved through some kind
8 of, you know, over-the-phone troubleshooting?

9 A. Not in NPS, but in Ciboodle, yes, there
10 would be an interaction history, and it would
11 show that we had a successful avoid of truck
12 roll. We didn't roll the truck out to the
13 customer's home. Not rolling truck, crash,
14 yeah.

15 Q. Thanks. We talked a little bit about
16 this earlier when we were looking at that
17 document that referenced an e-mail team, but
18 does Sears communicate with MPA customers by
19 e-mail? And I'm being deliberately general
20 there. So I presume the answer is probably
21 "yes" at least because there's some e-mail
22 marketing that goes to people with existing
23 MPAs; is that true?

24 A. Yes.

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1 Q. How about with respect to service?

2 A. Ah... we do have a service confirmation
3 e-mail that we can send out, so you're
4 successfully scheduled for service on Tuesday
5 between 8:00 and noon.

6 Q. Can a customer place a request for
7 service but over the e-mail?

8 A. No, not successfully. I mean, they
9 can, but it won't go anywhere.

10 Q. Do you ever get involved in dealing
11 with customer complaints?

12 A. Occasionally.

13 Q. When, for example, would you get
14 involved in a customer complaint?

15 A. To define "involved," it's been a long
16 time, several years since I've personally spoken
17 with a customer. So by "involved," what I'm
18 talking about is helping an associate or a
19 manager figure out the right way to interpret
20 the policy, take care of the customer, protect
21 the company, those kind of things. I'm in call
22 centers all the time. So it's, you know, "Hey,
23 Dainon, can you help?"

24 Q. When you say you're in call centers all

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1 the time, does that mean that you travel --

2 A. Travel.

3 Q. -- around to the different call centers
4 regularly?

5 A. Yep.

6 Q. How often do you do that?

7 A. Try to get to each one at least twice a
8 year.

9 Q. And these situations where you you've
10 been involved in helping other people deal with
11 customer complaints, are you communicating by
12 e-mail with the other -- with the other people
13 that are working on the problem?

14 A. Sometimes.

15 Q. Do you know -- this is, again, a
16 general question, but do you know what Sears'
17 policy is regarding retention of e-mails?

18 A. I know they're -- I know that I've
19 received legal hold requirements before on
20 different things. I don't know on just a
21 general e-mail what the policy is. I mean, I've
22 just always assumed that it's on a server, so
23 the company can keep it as long as they want
24 somewhere. Even if I've deleted it from my

47 (Pages 182 to 185)

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1 inbox, that doesn't mean it's gone. It would be
2 a good HR practice, but I don't know what the
3 official retention policy is.

4 (Exhibit 13 was marked for
5 ID.)

6 BY MR. DEVITO:

7 Q. I've given you what's been marked as
8 Exhibit 13. Have you seen this document before?

9 A. Yeah.

10 Q. Could you describe for me what it is?

11 A. It's a list of the cancellation reasons
12 that we would record when canceling a specific
13 protection agreement.

14 Q. And when you say "record," what are you
15 referring to?

16 A. In the cancellation screen flow or
17 process, one of the required fields is the
18 cancellation reason, and that would be stored
19 and captured and kept and retained in NPS. When
20 we were talking earlier about do we capture the
21 date we cancel, the amount we refunded, the
22 refund-type credit check, that kind of stuff --

23 Q. Um-hum.

24 A. -- this would be one of the fields

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1 retained and stored as well.

2 Q. And this list is used when either Sears
3 or the customer elects to cancel a PA?

4 A. Yes.

5 Q. And who at Sears does the coding?
6 Like, who makes the decision to -- as to which,
7 you know, reason a particular cancellation,
8 which code it should be assigned?

9 MS. BRUNO: Object to form.

10 But if you understand, you can answer.

11 THE WITNESS: The vast majority of the
12 time, it would be the retention specialist
13 canceling the protection agreement.

14 BY MR. DEVITO:

15 Q. So when you say "retention specialist,"
16 does that -- that means that any time someone
17 wants to -- or you -- anyone wants to cancel a
18 PA, they have to go -- call or whatever it is,
19 that it goes to someone whose job is a retention
20 specialist?

21 A. Yes.

22 Q. And what does a retention specialist
23 do? It sounds perhaps self-explanatory, but if
24 you could explain it to me.

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1 A. They would -- their job charge is to
2 try to talk the customer into keeping the
3 protection agreement, but ultimately, if it is
4 the wishes of the customer to cancel, then they
5 would process the cancellation and issue the
6 refund.

7 Q. So I'm just going to go through some of
8 these to see if you can sort of explain a little
9 bit more about what they mean. Look at No. 5,
10 "Coverage misunderstood." Would you explain
11 what was meant by that?

12 A. That would be selected by a retention
13 agent typically when a customer says: "I
14 thought I was going to be able to bring in the
15 broken parts after I had pushed it down the
16 stairs and you guys would give me new one, and
17 that's -- since you're telling me that you are
18 not going to cover it that way, then I don't
19 like this plan anymore and I want my money back"
20 would be an example of that, where they think
21 we're covering more or differently than what we
22 do, acts of nature, those kind of things.

23 Q. And how about No. 7, "Service-related
24 problem"?

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1 A. Typically that is selected when a
2 customer is voicing a complaint about something
3 technician-related or the service experience in
4 general. I called on a Tuesday and you guys
5 said you couldn't be here until the following
6 Monday. That's certainly not on one technician
7 but part of the service experience. The
8 technician showed up and he, you know, was
9 impolite to me. So I don't want you guys coming
10 back out. Those kind of situations, something
11 relating to a service order attempt or
12 fulfillment.

13 Q. Typically where a customer voices
14 displeasure with the service experience --

15 A. Yes.

16 Q. -- in some way?

17 A. Sorry.

18 Q. How about No. 13, "Technician requested
19 cancel"?

20 A. Typically that would be one of those
21 Sears reserves the right to cancel if it's age
22 or good working order or if it's one of those
23 health and safety to recycle your term, you
24 know, the crazy customer situation.

48 (Pages 186 to 189)

<p style="text-align: right;">Page 190</p> <p>1 Q. Okay. So all of those sorts of things 2 would fit into "technician requested cancel"?</p> <p>3 A. They could. It -- the disclaimer here 4 is these are all agent-selected user codes. So 5 there's some margin for error, some variation in 6 interpretation across the business, but the 7 major -- if you were to survey the team, those 8 would be the scenarios that I'm confident most 9 would give you.</p> <p>10 Q. How about No. 17, "Coverage credit 11 cancel"?</p> <p>12 A. That one is really not used much 13 anymore. It existed from when we would move 14 customers from a -- an à la carte Master 15 Protection Agreement to what we call "a cap 16 plan" that was a flat rate for any combination 17 of items, and so we would cancel off your 18 existing coverage and transfer your stuff -- 19 your items to a new plan. So it was kind of 20 more like bookkeeping. NPS is really old, 21 doesn't have drag and drop, so needed to cancel 22 and create new, but no money was changing hands.</p> <p>23 Q. And how about No. 24, "Revise number 24 items covered"?</p>	<p style="text-align: right;">Page 192</p> <p>1 "Price too high."</p> <p>2 Q. But this is a situation where the 3 customer has already paid?</p> <p>4 A. Yes.</p> <p>5 Q. So --</p> <p>6 A. It's buyer's remorse.</p> <p>7 Q. Okay. And that leads me to No. 4, 8 which is "Questions value." And so how do those 9 two differ?</p> <p>10 A. Not a lot. They are very similar in -- 11 and it's more about how the customer 12 communicates that to us. Sometimes they will 13 say: I can't -- you know, I bought it and I saw 14 my new credit card bill and my payments -- you 15 know, my monthly -- I've been paying it off and 16 it's -- my minimum payment went from 60 to 80 17 and oh, my gosh. Most agents would quote -- 18 would code that as a "price too high" reason 19 code or as another customer who says, you know, 20 "\$200 for two-year's of coverage, geez, after 21 four years I could buy a new one" or whatever 22 that dialogue sounds like, that agent -- that 23 retention specialist may code that one as 24 "questions value."</p>
<p style="text-align: right;">Page 191</p> <p>1 A. Typically that would be used where the 2 customer has buyer's remorse of some sort or 3 has -- no longer owns the merchandise or 4 whatever, but it was a multiple appliance plan 5 and they say, you know, "I sold that 6 refrigerator. I still want coverage on the 7 dishwasher and the washer and dryer, but that 8 refrigerator is long gone. Take it off my plan 9 and refund me for that portion of my Master 10 Protection Agreement."</p> <p>11 So we'd cancel the coverage on the 12 refrigerator and the associate could put 24, but 13 they also could put something like -- no longer 14 has -- 14, "no longer has merchandise." So 15 that's a good example of that kind of 16 interpretation and user selection.</p> <p>17 Q. How about No. 3, "priced too high"?</p> <p>18 A. It's a value proposition question in 19 the customer mind. Our retention agents would 20 try to show the customer why it's a great deal, 21 and if we're not successful in that conversation 22 and the customer says "No, I just don't feel 23 it's worth it; I can't afford it," you know, 24 those kind of things, then we would put in</p>	<p style="text-align: right;">Page 193</p> <p>1 Q. Is --</p> <p>2 A. But they get interchanged pretty 3 easily.</p> <p>4 Q. Is there any informational value to 5 Sears to having two basically interchangeable 6 codes?</p> <p>7 A. Probably not, to be frank. If we were 8 going to rewrite this today, we'd probably write 9 it differently. It's legacy.</p> <p>10 Q. Do you know when this was created?</p> <p>11 A. I know we added 29 through 32 within 12 the last few years. A lot of the rest of the 13 ones have been there for a -- as long as I can 14 remember.</p> <p>15 Q. I just want to go through a few more of 16 these. No. 12, "Transfer coverage," what does 17 that mean?</p> <p>18 A. Typically, that's used when Bob sells 19 or gives the refrigerator to Mary and part of 20 that transaction was the protection agreement 21 with it. So we allow customers to move the 22 coverage from one owner to another. So we would 23 be canceling it off of Bob's file and entering 24 the coverage on to Mary's file so we know to go</p>

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1 to Mary's house if and when she needs service.

2 Q. How about "Revised plan type"? What --
3 that's No. 22.

4 A. 22? Thank you.

5 We've been specifically carefully
6 talking about Master Protection Agreement. We
7 offer those other plans, the repair protection
8 agreement and that kind of stuff. So if the
9 customer was moving up or down from one of those
10 plans, always customer choice, that's what we
11 would use to cancel the old one before we create
12 the new one.

13 Q. So then I think I understand what 23,
14 "Revised contract term," is. Is that referring
15 to the length?

16 A. Yes. And it would always be a
17 reduction. Because these are cancel codes. So
18 we would be taking it from five down to, or
19 three down to.

20 Q. Right.

21 A. We'd have to record a new agreement to
22 revise the term up. That would be recording a
23 new agreement, not a cancel.

24 Q. And how about 28, "Sears ending

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1 Q. When these codes are used and
2 agreements are canceled, other than the coding
3 of it, the number that you would save, have in
4 your system, be able to see, is there any other
5 information that's kept about the reasons for
6 cancellation?

7 A. Yes. There's a free-form cancel
8 comments field where the retention agent can --
9 I don't know, like a -- you know, however many
10 characters, 50 characters, whatever it is, where
11 they can type in what the customer's telling
12 them and then the first name of who they spoke
13 with.

14 Q. And do they have to put something in
15 there?

16 A. Yes.

17 Q. And can you use NPS to tell you exactly
18 how many customer cancellations occurred in any
19 particular category on here?

20 A. No.

21 Q. You can't say, you know, tell -- ask it
22 to run a report that says show me all the -- all
23 the situations where cancel reason No. 1 has
24 been inputted?

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1 relationship with customer/product"?

2 A. That's kind of the big version of
3 No. 13, where now we're saying that not only are
4 we not going to cover that item, but potentially
5 we're not going to -- we're wiping the slate
6 clean with that customer because they won't --
7 or we're eliminating that relationship because
8 they won't put the dog away.

9 Q. So it's kind of a customer misbehavior
10 code for lack of a better term?

11 A. That's an example of why we would use
12 that code, yes.

13 Q. Okay.

14 A. It's not all inclusive.

15 Q. Well, how about the aspect of it that
16 Sears ending relationship with product, what is
17 that -- what could that mean?

18 A. I'm struggling to think of a situation
19 in a call center environment where one of our
20 retention agents would use 28 specific to a
21 product. Frankly, I just don't like the way
22 that one is worded, because I can't think of an
23 example to give you that the agents would ever
24 use it in that way.

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1 A. Data warehouse, yes.

2 Q. Sorry. So you can use data warehouse
3 to tell you precisely how many cancellations
4 occurred in each of these categories?

5 A. Yes.

6 Q. And can you limit that by date? Can
7 you say I want to know all the No. 10s that
8 occurred between X date and Y date?

9 A. Yeah. I mean, we don't have that
10 readily -- you know, it's not a "let me
11 refresh," but there's an SQL code that could be
12 written for it, I'm sure.

13 MS. BRUNO: David, we produced a report
14 that has that information.

15 MR. DEVITO: Well, I'm going to get
16 there.

17 MS. BRUNO: Okay. I --

18 MR. DEVITO: The report is called a
19 replacement reasons report. I --

20 MS. BRUNO: That's a different report.

21 MR. DEVITO: That's a different report?
22 Okay. Do you know what -- that's not -- the
23 replacements -- can we go off the record?

24 (Discussion off the record.)

50 (Pages 194 to 197)

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1 BY MR. DEVITO:

2 Q. And can you tell from the data
3 warehouse or otherwise whether a customer
4 received a refund upon cancellation?

5 A. Yes.

6 Q. And can you tell the amount of that
7 refund?

8 A. Yes.

9 MR. DEVITO: So I think we marked some
10 of the replacement reason report yesterday; is
11 that right?

12 MS. BRUNO: Yes. I believe that's
13 maybe number 1.

14 BY MR. DEVITO:

15 Q. This is what was marked yesterday as
16 Exhibit 1. (Tendering document to witness.)

17 Were you involved in preparing this
18 report?

19 A. Yes.

20 MR. DEVITO: So and -- forgive me if
21 Debbie did this yesterday with 15, but --

22 MS. BRUNO: Oh, no, she didn't.

23 MR. DEVITO: Okay. All right.

24 BY MR. DEVITO:

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1 So it's just a way to identify. You
2 know, as you're looking at customer record and
3 they purchase multiple agreements either because
4 they did a bunch of recent shopping or they have
5 been with us a long time or both, which
6 agreement are you looking at? Oh, the one that
7 ends in 48? Okay. That's this one. It was
8 bought on such and such a day, covering the
9 washer.

10 Q. Okay. So --

11 A. Pretty similar to a policy number on a
12 car, if policy numbers changed each time you
13 renewed.

14 Q. The first time a customer purchases an
15 MPA, they get No. 1; is that right?

16 A. Close. It's not one, two, three, four,
17 but it always goes up in number. But it's not
18 sequential. It's always ascending.

19 Q. You can't read into it that this person
20 has 48 --

21 A. 47 underneath that one?

22 Q. Yeah.

23 A. No.

24 Q. Is there any particular informational

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1 Q. If you could just go across the columns
2 at the top, and I'm going to ask you what each
3 of those fields mean to the extent that they're
4 not totally self-explanatory.

5 I take it that each customer has its
6 own unique customer number; is that correct?

7 A. Yes.

8 Q. So the next column over is "Original
9 agreement number." What does that mean?

10 A. It means that it was a stand-alone
11 recorded protection agreement. This was
12 recorded on such and such a date to cover such
13 items until such date for this price. It was
14 the policy, the contract that we entered into.

15 Q. So when it says, the first one, "48,"
16 what does that mean?

17 A. The way it works is that you would take
18 the customer number and a five digit agreement
19 suffix to make up an agreement number. So this
20 doesn't have the leading zeros, but if you were
21 to look up this customer, it would be customer
22 79885463500048 would be their full agreement
23 number if you were to look at their certificate,
24 for example.

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1 value in that other than it identifying
2 particular agreement?

3 A. No.

4 Q. So how about the column that says
5 "Agreement cancellation indicator"?

6 A. That's indicating whether or not
7 original agreement number, in the second column,
8 as of the date running this report, either
9 yes -- Y for yes has been canceled in full or P,
10 like three rows down is partial, meaning we
11 revised the items or the term.

12 Q. Okay. So on -- and this may be a very
13 silly question, but why is this called a
14 replacement reasons report?

15 A. All of the customer examples listed on
16 this report are customers who received a
17 replacement product under their protection
18 agreement.

19 Q. And I guess because everything on here
20 is either "yes" or "partial cancellation," they
21 declined?

22 A. No, not accurate.

23 Q. Okay.

24 A. The -- good guess. But the way our

51 (Pages 198 to 201)

<p style="text-align: right;">Page 202</p> <p>1 system works is we can't move coverage from one 2 item to another. So I don't have a way to grab 3 agreement 48 and say it used to be on the old 4 refrigerator, now it's on the new refrigerator. 5 I don't have a way to just move the coverage 6 over. I have to cancel in the system agreement 7 48, and I would record a new agreement, 8 potentially 50 or 55 or whatever on the new 9 refrigerator. 10 So in order to move coverage when no 11 longer owns old one, now has new one, I have to 12 process a cancellation and enter a new agreement 13 so that the new refrigerator reflects the 14 coverage that the customer still has. 15 Q. Okay. And is that coded in a 16 particular way? 17 A. The cancellation? 18 Q. When you're canceling and then putting 19 it on to a new agreement. 20 A. Yes. 21 Q. And what does it say? 22 A. Ah, it's -- 23 Q. Is that transfer coverage? 24 A. (Reviewing document.)</p>	<p style="text-align: right;">Page 204</p> <p>1 (Exhibit 14 was marked for 2 ID.) 3 BY MR. DEVITO: 4 Q. So I'm going to sort of ask you to put 5 this side-by-side with Exhibit 1 because I'm -- 6 what I'd like to do is understand sort of the 7 interplay between the two of them, if there is 8 any. 9 A. (Witness complying.) 10 Q. Is there a -- looking at Exhibit 1, is 11 there a cancel code associated with each of 12 these? 13 A. There would have to be, but it doesn't 14 appear to be displayed on this report. 15 Q. But there would be a cancel reason 16 associated with each one of these? 17 A. Yeah. In -- yes, in order to get an 18 agreement cancellation indicator of a Y or a P, 19 it means that a cancel was processed which 20 requires a cancellation reason code to be 21 selected. 22 Q. And can you tell from this whether 23 refunds were issued to customers in connection 24 with any of these cancellations?</p>
<p style="text-align: right;">Page 203</p> <p>1 Yeah. 2 Q. Could it be -- 3 A. Yes. 4 Q. -- anything else? 5 A. I wanted to look and make sure there 6 wasn't anything else that somebody else could 7 pick. (Reviewing document.) 8 The training is to use 12, and the 9 group that handles the majority of these would 10 use 12. It's possible that somebody could use 11 No. 14, misunderstanding, you know, "oh, I don't 12 have that refrigerator anymore, I got this new 13 one" and the agent doesn't understand that it 14 was a PA replacement as opposed to just "I was 15 ready for this shiny new model." So they could 16 have used 14, but the training is 12. 17 MR. DEVITO: Maybe it will help if you 18 we take a break and I look at that other 19 document. 20 MS. BRUNO: Okay. 21 (Recess taken from 3:08 p.m. 22 to 3:11 p.m.) 23 MR. DEVITO: You can mark this as 14. 24</p>	<p style="text-align: right;">Page 205</p> <p>1 A. I can't tell from this report. They 2 shouldn't have been. 3 Q. And why not? 4 A. If we are replacing a product, we 5 wouldn't also refund you for the money. You get 6 one or the other as a general policy. I'm -- 7 there's probably an exception to the rule 8 somewhere out there in the data warehouse, but 9 as our contract is written, you get one or the 10 other. 11 Q. Is every one listed on here, because 12 there's a replacement reason, mean that there 13 was actually a replacement done? 14 A. That's my understanding of this report, 15 yes, is that a new product was successfully 16 selected from the store. 17 Q. Okay. And so would you need a -- would 18 there be a separate report that would show every 19 instance in which a refund was issued instead? 20 A. (No response.) 21 Q. Let me ask it this way: Would you need 22 a different report to show you that? 23 A. Yeah. 24 Q. Now, on Exhibit 1, there's columns that</p>

<p style="text-align: right;">Page 206</p> <p>1 say "Product description" and "New product 2 description." Does -- it doesn't say the brand 3 there, does it? 4 A. No, it does not. 5 Q. Could you generate a report that 6 indicated brands? 7 A. Possible, yes. There's a brand name 8 field with each merchandise code, so yeah, the 9 data's available. I -- generate the report? It 10 would depend on the request and those kind of 11 things, but yeah, the data's there. 12 Q. Now, if you look at Exhibit 14 -- 13 A. Okay. 14 Q. -- on the second page, it appears to be 15 giving the gross value of canceled MPAs broken 16 down by each of these canceled reason codes on a 17 per month basis; is that accurate? 18 A. Yes. 19 Q. It does not indicate the number of 20 agreements that were canceled; is that accurate? 21 A. Yes. 22 Q. Would it be possible to create a report 23 that indicated the number of cancellations 24 associated with these dollar values?</p>	<p style="text-align: right;">Page 208</p> <p>1 exported to Excel and manipulated that way. So 2 you get all the bells and whistles of Excel, so 3 yes, sir. 4 MS. BRUNO: This was produced in Excel. 5 MR. DEVITO: I thought you produced it 6 in a searchable PDF, but I could be wrong. I 7 don't believe I've ever seen the columns with 8 the numbers next to them. If I had, I certainly 9 wouldn't have asked that question. 10 MS. BRUNO: I hear you. Got it. 11 BY MR. DEVITO: 12 Q. So moving away from these documents, 13 has there -- or are you aware of any situation 14 in which Sears has changed its position on 15 whether or not a particular product is covered, 16 meaning up until X date we covered this product 17 and then we decided we're not going to cover 18 this anymore? 19 A. Yes, we've exited the market on new 20 contracts for certain merchandise, but we've 21 always honored that contract at the customer 22 level for its original duration. So we 23 wouldn't -- vacuum cleaners, for example, we 24 stopped renewing, stopped selling new coverage,</p>
<p style="text-align: right;">Page 207</p> <p>1 A. The data's there. I -- so yeah, it's 2 possible. I don't have a report readily 3 available that has that, but the data's there. 4 So I'm sure it could be retrieved. 5 Q. So, for example, on Exhibit 1 -- we 6 don't have the whole thing because it's 5,000 7 pages -- but could you make the report tell you, 8 for instance, how many different customer 9 numbers are in the report? 10 MS. BRUNO: Objection as to form. 11 THE WITNESS: How -- how many unique 12 customer numbers are there? 13 BY MR. DEVITO: 14 Q. How many are listed on any particular 15 report? Like, could you make totals at the 16 bottom that said -- or total number of lines? 17 A. Probably. I mean, it's a function of 18 Excel. So I would say yes. I didn't mean -- 19 MS. BRUNO: No. You literally took the 20 words that were in my head when you said that. 21 BY MR. DEVITO: 22 Q. If it's an Excel spreadsheet, then yes, 23 sure, you could -- 24 A. Yes. Most of these things could be</p>	<p style="text-align: right;">Page 209</p> <p>1 honored all contracts up until they expired. 2 Q. And what goes into the determination 3 not to continue covering a product? 4 MS. BRUNO: Objection as to form. 5 If you know, you can answer. 6 THE WITNESS: A variety of factors, 7 including the value of the product in the 8 marketplace as -- you know, DVD players used to 9 be an MPA item and now they're an SPP item 10 because they're so cheap and inexpensive. They 11 become a disposable product rather than a 12 serviceable merchandise item. 13 Sometimes the manufacturer has gone out 14 of business, so we're not going to be able to 15 find a supply of aftermarket parts to repair 16 future items. So we don't want to expose 17 ourselves to any further coverage. So we 18 stopped renewing and extending. Maybe it's just 19 not a profitable venture for us anymore, that 20 product with the service costs and those kind of 21 things. So we just want to exit that space in 22 the market or any combination -- you know. 23 BY MR. DEVITO: 24 Q. Sure. I want to ask you a few</p>

<p style="text-align: right;">Page 210</p> <p>1 questions about marketing of MPAs.</p> <p>2 A. Okay.</p> <p>3 Q. Who's responsible for MPA marketing?</p> <p>4 Is there person that's in charge of marketing</p> <p>5 for -- with respect to MPAs?</p> <p>6 A. Most directly responsible today would</p> <p>7 be Demi. She's on -- she's the one that's on</p> <p>8 there as channel manager.</p> <p>9 Q. Right. She has your old job?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And what kind of marketing does Sears</p> <p>12 do for MPAs?</p> <p>13 A. Outbound telemarketing, direct mail,</p> <p>14 e-mail and answering inbound calls. There's</p> <p>15 signage in the retail stores showing off our</p> <p>16 protection agreements, and it's available as an</p> <p>17 add-on product in the cart on Sears.com. And</p> <p>18 technicians would talk about it, offer it in the</p> <p>19 home.</p> <p>20 Q. And is there a portion of a Sears</p> <p>21 website that's devoted to MPA sales?</p> <p>22 A. There's a page, yes.</p> <p>23 Q. And --</p> <p>24 A. It's -- well, I'm sorry. As I listen</p>	<p style="text-align: right;">Page 212</p> <p>1 You can answer if you know.</p> <p>2 THE WITNESS: Retail purchases, service</p> <p>3 order history and general call-ins.</p> <p>4 BY MR. DEVITO:</p> <p>5 Q. So it's almost all to -- directed to</p> <p>6 existing or prior Sears' customers?</p> <p>7 A. Yes. They have some sort -- they may</p> <p>8 not be -- they may not have a protection</p> <p>9 agreement record, but they've done something</p> <p>10 with us where they've given us their name,</p> <p>11 address, phone.</p> <p>12 (Exhibit 15 was marked for</p> <p>13 ID.)</p> <p>14 BY MR. DEVITO:</p> <p>15 Q. I apologize for the copy quality of</p> <p>16 this document. I don't know if it was better or</p> <p>17 worse than the original was.</p> <p>18 MS. BRUNO: Oh, it was better, I</p> <p>19 promise. Oh.</p> <p>20 MR. DEVITO: Do you want to go off the</p> <p>21 record for a second?</p> <p>22 MS. BRUNO: No. We can be on the</p> <p>23 record. That's fine. Based on the Bates</p> <p>24 number, I believe you produced this to us.</p>
<p style="text-align: right;">Page 211</p> <p>1 to your question more carefully, MPA sales?</p> <p>2 There's a page on Sears.com that talks about the</p> <p>3 Master Protection Agreement, but it's not a</p> <p>4 place where you can just go in and sign in and</p> <p>5 buy coverage. It's more of the explanation to</p> <p>6 go with the refrigerator purchase.</p> <p>7 Q. So when you're buying a refrigerator on</p> <p>8 Sears.com, would you be prompted to purchase an</p> <p>9 MPA with respect to that product?</p> <p>10 A. Yes.</p> <p>11 Q. And what kind of e-mail marketing does</p> <p>12 Sears do for MPAs?</p> <p>13 A. It's very limited today. We are</p> <p>14 literally taking the direct mail list and</p> <p>15 sending some customers an e-mail instead, and</p> <p>16 some are getting both the direct mail, snail</p> <p>17 mail letter and an e-mail, but it's the same</p> <p>18 target audience that would have received a</p> <p>19 letter, just trying to also send them an e-mail</p> <p>20 to see if that gets us better response rates.</p> <p>21 Q. And what is that target audience?</p> <p>22 Like, where do you get the contact information</p> <p>23 for those people?</p> <p>24 MS. BRUNO: Objection as to form.</p>	<p style="text-align: right;">Page 213</p> <p>1 MR. DEVITO: Yeah.</p> <p>2 MS. BRUNO: Okay.</p> <p>3 BY MR. DEVITO:</p> <p>4 Q. So you've been and handed what's been</p> <p>5 marked as Exhibit 15, and this is a document</p> <p>6 that we produced, that our client had received</p> <p>7 from Sears. Do you recognize this?</p> <p>8 A. No.</p> <p>9 Q. Is this the type of marketing material</p> <p>10 Sears uses?</p> <p>11 A. I mean, it's -- yeah, it absolutely</p> <p>12 looks like it's from Sears. It's not a letter</p> <p>13 I've ever worked on personally or seen.</p> <p>14 Q. So you wouldn't think -- you don't</p> <p>15 think that Sears is still using this form of</p> <p>16 letter as marketing material?</p> <p>17 A. Oh, I wouldn't know either way.</p> <p>18 There's -- the volume of material going out to</p> <p>19 different customers from different lines of</p> <p>20 business, I couldn't speak intelligently as to</p> <p>21 whether this is current or not.</p> <p>22 Q. So is there a lot of different types of</p> <p>23 direct mail, marketing going on?</p> <p>24 A. I would say so, yeah.</p>

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1 Q. But lots of different looking documents
2 that are sent out direct mail to different
3 customers?

4 MS. BRUNO: Objection as to form.

5 You can answer.

6 THE WITNESS: While this is a direct
7 mail piece, this isn't something that came from
8 the service contracts or protection agreement
9 division. So it's from some other part of
10 Sears. It looks to be from Sears Repair. So
11 yeah, I mean, Repair can send stuff out, Service
12 Contracts could send stuff out, and the two
13 don't necessarily talk.

14 BY MR. DEVITO:

15 Q. Although to some extent they're
16 cross-marketing each other's products and
17 services?

18 A. They certainly appear to be, because
19 they talk about -- the third paragraph says "you
20 can also purchase a protection agreement."

21 Q. And so, like, in the second paragraph
22 there, it says "We repair all major brand items,
23 large and small, even if they weren't purchased
24 at Sears - everything from dishwashers to DVDs."

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1 repair services. Is that the distinction here
2 that you're saying, that Sears might offer
3 repair services on a -- I forget the term you
4 used but --

5 A. Collect call.

6 Q. -- on a collect call basis for other
7 brands?

8 A. You're exactly right. That's the
9 distinction that exists in my mind as part of
10 this business, the difference between servicing
11 as a collect call versus servicing as a warranty
12 provider.

13 Q. So are you aware of any major brand
14 items -- what you would consider major brand
15 items that Sears will not repair?

16 A. Yeah.

17 Q. Can you give me some examples?

18 A. Um... I mean, like we talked earlier,
19 NordicTrack is a brand that I don't see -- this
20 isn't specific to home appliances and HVAC like
21 the previous document was, and so no, most
22 people would consider NordicTrack a major brand,
23 but we don't service it.

24 Q. Any others that you can think of off

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1 Is that an accurate statement, that
2 Sears repairs all major brand items?

3 A. I don't know if there's a def- -- a
4 universal definition of what constitutes
5 "major." So I think in our opinion and most
6 practical purposes, we service quite bit of
7 stuff, but I don't know whether I could say --
8 that I could back up that statement. I'm not
9 part of the service organization. I'm sorry.

10 Q. Well, we certainly looked at list of
11 brands that Sears does not repair; is that fair
12 to say?

13 MS. BRUNO: Objection to the form of
14 the question.

15 THE WITNESS: I don't think we looked
16 at a list like that, no.

17 BY MR. DEVITO:

18 Q. Okay. What's -- then sort of help me
19 out with what -- we looked at this list, which I
20 know you weren't familiar with, but this
21 Exhibit 12 --

22 A. Um-hum.

23 Q. -- brand list of nonserviceable brands.
24 Now, I understand that there's in-warranty

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1 the top of your head?

2 A. I mean, some of those high-end brands
3 like we've been talking today from that list
4 earlier give us trouble.

5 Q. And what do you mean by that?

6 A. It's difficult to source parts and get
7 the technical information from some of those
8 manufacturers. They like to use their own
9 network.

10 THE WITNESS: Can I get water?

11 MS. BRUNO: Yeah.

12 MR. DEVITO: Yeah. Sure. Let's take a
13 break.

14 (Recess taken from 3:29 p.m.
15 to 3:34 p.m.)

16 (Exhibit 16 was marked for
17 ID.)

18 BY MR. DEVITO:

19 Q. I've handed you what's been marked as
20 Exhibit 16. I believe this is a document --
21 well, it's Bates-numbered SEARS 2497, and I
22 think it's been excerpted. So it's not the full
23 document that this was taken from.

24 I just wanted you to -- if you would

55 (Pages 214 to 217)

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1 turn to the -- what's the third page. It says
2 "Highlights of Ciboodle" at the top. The third
3 paragraph down says "By tying together all of
4 the information by the customer, including past
5 interactions and current cases, Ciboodle will
6 enable you to provide a consistent and efficient
7 customer experience and eliminate the need to
8 copy notes into multiple systems."

9 So my question is about the reference
10 at the end there to copying notes into multiple
11 systems. What is that referring to?

12 MS. BRUNO: Objection as to form.

13 You can answer if you know.

14 THE WITNESS: I'm not sure I do.

15 (Reviewing document.)

16 BY MR. DEVITO:

17 Q. If you don't know, that's okay.

18 A. Yeah, I don't.

19 Q. Was there a time when customer service
20 people at Sears were required to copy notes into
21 multiple systems?

22 A. Probably. I mean, what's coming to
23 mind is, you know, we have NPS, we have
24 Ciboodle, not just Case Ciboodle but there's

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1 sixth paragraph down, it says "Current groups
2 utilizing CCD Ciboodle -- Ciboodle. Sorry.

3 A. No worries.

4 Q. We're not videoing this and no one is
5 ever going to know.

6 MS. BRUNO: Except you just talked
7 about it.

8 MR. DEVITO: I know.

9 MS. BRUNO: Sorry.

10 MR. DEVITO: No one would have ever
11 known. Now I'm a fool on the record. Silly me.

12 BY MR. DEVITO:

13 Q. "Current groups utilizing CCD Ciboodle
14 are Technical Specialists, Repair Customer Care,
15 PartsDirect, Service Contracts Outbound..."

16 My question is: What is CCD Ciboodle?

17 A. Case Ciboodle -- oh, no. I'm sorry.

18 CCD Ciboodle is Ciboodle. So it's an extraneous
19 differentiation between -- there's Case Ciboodle
20 and there's Ciboodle. CCD Ciboodle, Ciboodle,
21 the same thing --

22 Q. Okay.

23 A. -- extra first name.

24 Q. Does CCD stand for anything?

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1 Ciboodle which is a separate sign-on, we have a
2 thing, GCRS, gift card request system, where if
3 we're requesting to send a gift card to a
4 customer for any reason whatsoever, that's how
5 you issue a gift card. That was a separate
6 system.

7 So perhaps this was intended to say you
8 can now document that stuff all in Case Ciboodle
9 instead of in Ciboodle and in GCRS, gift card
10 request, you know, those kind of things, but
11 that's me giving you my best guess right now.

12 Q. Okay. Were there any systems that
13 existed prior to the use of Ciboodle that were
14 eliminated by its introduction?

15 A. At the agent level, we stopped using
16 NPS to handle calls. NPS was certainly not
17 eliminated, but it was no longer used at the
18 associate call center level. We migrated from
19 NPS to Ciboodle as the daily system of working.

20 Q. Okay. Other than the systems that
21 you've mentioned, can you think of any other
22 systems that this might be referring to?

23 A. I can't.

24 Q. If you'd just flip one page, in the

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1 A. Probably.

2 Q. But you don't know?

3 A. But I don't know what it is.

4 Q. And so what you're referring to is Case
5 Ciboodle is what's referenced in the next
6 paragraph down, which says "Business groups with
7 Case Management Ciboodle...?"

8 A. Correct.

9 Q. If you flip one more page, there's a
10 reference after -- after it says "Introduction"
11 in that section, there are two paragraphs and at
12 the bottom of the second paragraph, there's a
13 reference to "Third Party Solutions."

14 Could you tell me what that is? It's
15 in the last line there.

16 A. (Reviewing document.)

17 To be honest, I'm not familiar with
18 that term, "Third Party Solutions," but from the
19 context of it, it would appear to say that we're
20 talking about referring to a group that handles
21 customer situations when a third party like the
22 Better Business Bureau or an attorney demand or
23 an Attorney General complaint has been engaged.

24 Q. Do you know who at Sears might know

56 (Pages 218 to 221)

<p style="text-align: right;">Page 222</p> <p>1 what this -- might know specifically what is 2 meant there by "Third Party Solutions"? 3 A. Like who would I ask? 4 Q. Yeah. Is there a better person to ask 5 than you about that? 6 A. Probably. 7 Q. Well, who would you ask? 8 A. I would probably ask Bilal. 9 Q. Could you spell that? 10 A. B-I-L-A-L. 11 Q. Is Bilal on the org chart that we 12 looked at? 13 A. No. But he is on Exhibit 6 right below 14 me. 15 Q. I see that. Thank you. 16 A. Yeah. 17 MR. DEVITO: That's all I've got. So 18 we're done. 19 MS. BRUNO: Okay. So I have no 20 questions for this witness. 21 THE REPORTER: Do you have a standing 22 order or did you tell the reporter yesterday? 23 MS. BRUNO: No, but we'll reserve 24 signature.</p>	<p style="text-align: right;">Page 224</p> <p>1 UNITED STATES DISTRICT COURT 2 FOR THE NORTHERN DISTRICT OF ILLINOIS 3 EASTERN DIVISION 4 NINA GREENE and GERALD GREENE,) 5 Plaintiffs,) 6 -vs-) Case No. 7 SEARS PROTECTION Company,) 1:15-cv-02546 8 SEARS ROEBUCK and Co. and) 9 SEARS HOLDINGS Corporation,) 10 Defendants.) 11 12 I hereby certify that I have read the 13 foregoing transcript of my deposition given at 14 the time and place aforesaid, consisting of 15 pages 1 to 223, inclusive, and I do again 16 subscribe and make oath that the same is a true, 17 correct, and complete transcript of my 18 deposition so given as aforesaid and includes 19 changes, if any, so made by me. 20 21 _____ 22 DAINON SETZER 23 SUBSCRIBED AND SWORN TO 24 before me this ____ day of _____, A.D. _____.</p>
<p style="text-align: right;">Page 223</p> <p>1 MR. DEVITO: How long is regular 2 delivery? 3 THE REPORTER: I believe it's eight 4 business days. 5 MR. DEVITO: Okay. That should be 6 good. 7 (Deposition concluded at 3:46 p.m. CST.) 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	<p style="text-align: right;">Page 225</p> <p>1 STATE OF ILLINOIS) 2) ss: 3 COUNTY OF COOK) 4 I, Deborah Habian, a Certified 5 Shorthand Reporter within and for the State of 6 Illinois, do hereby certify: 7 That previous to the commencement of 8 the examination of the witness, the witness was 9 duly sworn to testify the whole truth concerning 10 the matters herein; 11 That the foregoing deposition was 12 reported stenographically by me, was thereafter 13 reduced to printed transcript by me, and 14 constitutes a true record of the testimony given 15 and the proceedings had; 16 That the said deposition was taken 17 before me at the time and place specified; 18 That the reading and signing by the 19 witness of the deposition transcript was agreed 20 upon as stated herein; 21 That I am not a relative or employee 22 of attorney or counsel, nor a relative or 23 employee of such attorney or counsel for any of 24 the parties hereto, nor interested directly or indirectly in the outcome of this action. IN WITNESS WHEREOF, I do hereunto set my hand this ____ day of _____, 20____. DEBORAH HABIAN, CSR, RMR, CRR, CLR Notary Public CSR No. 084-02432</p>

57 (Pages 222 to 225)

EXHIBIT 5 to EXHIBIT 2

SUBJECT TO CONFIDENTIALITY
ORDER

DATED JULY 29, 2015

EXHIBIT 6 to EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

NINA GREENE and GERALD GREENE,

Plaintiffs,

v.

SEARS PROTECTION CO., SEARS,
ROEBUCK AND CO., and SEARS
HOLDINGS CORP.,

Defendants.

Civil Action No. 15-cv-02546

Judge Jorge L. Alonso

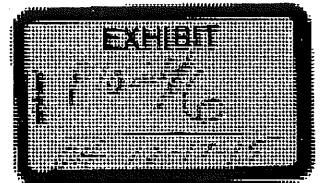
JURY TRIAL DEMANDED

DEFENDANTS' RULE 26(a)(1)(A) INITIAL DISCLOSURES

Defendants Sears Protection Co., Sears, Roebuck and Co., and Sears Holding Corp., (collectively "Sears") by and through its undersigned counsel, and pursuant to Federal Rules of Civil Procedure 26(a)(1)(A), hereby make the following disclosures to Plaintiffs Nina Greene and Gerald Greene ("Plaintiffs") and state as follows:¹

I. General Statement.

Sears' investigation and discovery in this action are continuing. Accordingly, Sears reserves the right to supplement and/or amend its disclosures.



¹ Nothing herein shall be deemed to waive any privilege or objection to discovery. Nor shall anything herein be deemed an admission about the relevancy, admissibility of, or weight to be accorded to, any evidence that may be offered by Plaintiffs at trial or at any class certification hearing. Sears reserves its right to amend or supplement these disclosures at any time, as permitted by law.

II. Individuals (F.R.C.P. 26(a)(1)(A)(i)).

Based upon information currently and reasonably available, Sears identifies the following individuals as likely to have discoverable information that Sears may use to support its claims or defenses:

1. Nina Greene and Gerald Greene
c/o Plaintiffs' Counsel

Plaintiffs have information relating to the issues and claims alleged in their Complaint, as well as to defenses to those claims. Plaintiffs further information regarding their Master Protection Agreements ("MPAs") and the circumstances relating to the purchase of those agreements as well as any discussions with Sears or its agents regarding the agreements.

2. Tina Anthony
(Sears Claims Consultant in Executive Member Solutions and Recovery)
c/o Dentons US LLP
233 S. Wacker Drive, Suite 5900
Chicago, IL 60606
Attn: Leah Bruno
(312) 876-7456

Ms. Anthony has information on Sears' interactions with Ms. Greene regarding her concerns with respect to her MPAs. Ms. Anthony is also knowledgeable about the Greene's MPA purchase history.

3. Ashly Jobin,
(Sears Manager of Service Contracts Administration)
c/o Dentons US LLP
233 S. Wacker Drive, Suite 5900
Chicago, IL 60606
Attn: Leah Bruno
(312) 876-7456

Ms. Jobin has information on issues relating to refunds for or buyouts of MPAs. Ms. Jobin also has information on issues relating to the investigation into Ms. Greene's MPA service history and customer service interactions.

4. Danion Setzer

(Sears Customer Segment Manager in Service Contracts)
c/o Dentons US LLP
233 S. Wacker Drive, Suite 5900
Chicago, IL 60606
Attn: Leah Bruno
(312) 876-7456

Mr. Setzer has information on (1) issues relating to post-point-of-purchase service agreement sales and marketing, (2) issues relating to customer records system, (3) issues relating to service under MPAs.

5. Bilal Aslam
(Sears National Inquiry Center & Resolutions Team Manager)
c/o Dentons US LLP
233 S. Wacker Drive, Suite 5900
Chicago, IL 60606
Attn: Leah Bruno
(312) 876-7456

Mr. Aslam has information on issues related to customer refund requests as well as refunds issued to Ms. Greene.

The above disclosures are based on the allegations in the Complaint and upon counsel's investigation to date. Sears reserves the right to disclose additional individuals with knowledge as they become known during the course of discovery.

III. Documents (F.R.C.P. 26(a)(1)(A)(II)).

Sears may use the following categories of documents and/or tangible things to support its arguments and defenses. The documents identified are located in, or are available in electronic format through Sears' counsel.

- Sears Protection Company Master Protection Agreements;
- Sears internal procedures governing MPAs including intranet pages discussing service fulfillment guidance, selling rules, case creation and documentation process, product replacement and service issues;
- Sears Protection Plan marketing materials;

- Sears customer service records; and
- Plaintiffs' MPA worksheet, service history, contact history, replacement appliance authorization records, and payment records.

Sears reserves the right to rely on additional documents, document categories, and/or tangible things identified by the parties herein and/or discovered or obtained through the course of this action, including, but not limited to, documents produced by Plaintiffs and/or third parties.

IV. Damages (F.R.C.P. 26(a)(1)(A)(iii)).

Not applicable.

V. Insurance F.R.C.P. 26(a)(1)(A)(iv)).

Sears is currently investigating whether any applicable insurance agreements may exist,

but states that if such insurance agreements exist it will provide, for inspection and copying under Rule 34, any such insurance agreements.

Dated: June 15, 2015

Respectfully Submitted,

By: /s/ Leah R. Bruno

Natalie J. Spears
Leah R. Bruno
Christopher Q. King
Dentons US LLP
233 South Wacker Drive
Suite 5900
Chicago, Illinois 60606
312.876.8000 telephone
natalie.spears@dentons.com
leah.bruno@dentons.com
christopher.king@dentons.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

I, Leah R. Bruno, hereby certify that on June 15, 2015, I electronically served the foregoing Defendants' Rule 26(a) Initial Disclosures to all counsel of record

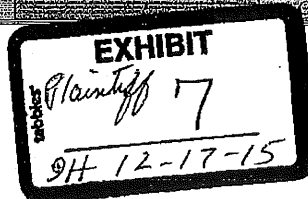
/s/ Leah R. Bruno

EXHIBIT 7 to EXHIBIT 2

Protection Agreements - Coverage Grid
(Limitations Apply - See Contract for Details)

COVERAGE	Master Protection Agreement (MPA)	Rapid Resolution Agreement (RSA)	ServiceSmart Agreement (SSA)	Home Warranty (HW)
Coverage of Parts and Labor needed to keep products working under normal use	X	X	Up to \$500 per year	\$60 Deductible per trade
As Many Service Calls as Needed to keep the product in proper operating condition	X	X	X	\$60 Deductible per trade
Nationwide Service available	X	X	X	All States except Alaska, Hawaii and Puerto Rico
Rapid Resolution Fast Help by phone for all covered products	X	X	X	
Product Replacement with like item from Sears if repair cannot be completed due to unavailability of functional parts or technical information	X	X	Up to \$500 per year	Up to \$10,000 (Ultra Premium products such as Viking, Wolf, GE Monogram up to \$1,000)
No Lemon Guarantee Replace product upon request if 4 or more product failures within 12 covered months. Requires repair or replace of functional parts	X	X	X	
Food Loss Protection	\$200 / year	X	\$200 / year Excludes: No damage to grill	
Rental Reimbursement	X	X	X	
25% Discount on Non-Covered Repairs 25% discount off regular price of service performed and parts installed	X	X	X	25% discount on non-covered repairs except plumbing and electrical
25% Reimbursement on Non-Covered Parts purchased at Sears	X	X	X	
Annual Preventive Maintenance Check, at customer request	X	X	X	Two HVAC PM checks with every plan
Cancellation with Refund	Full refund within full warranty period or within 60 days, prorated after warranty expiration or after 60 days	Full refund within full warranty period or within 60 days, prorated after warranty expiration or after 60 days	Full refund within 60 days, prorated after 60 days. No refund on non-covered service performed	Full refund within 30 days, pro-rated thereafter
Cosmetic Defects Up to 3 years from date of original Product Purchase	X	X	Only if required to resolve in 1 year	
Multiple Years of Coverage available	Up to 5 years on most products	Up to 5 years on most products	Up to 5 years	Monthly premium with auto-renew
Transferable to subsequent owners	X	X	X	X
Sellable by Technicians or Sales Associates	X	X	Call Center Only	Technicians and Call Center Only
Maximum Repair / Replace Liability	No Maximum	No Maximum	Maximum Repair \$500 If cost of repair exceeds \$500 customer selects repair or replace over \$500 Replaces \$500 credit toward comparable Sears product Cancel the agreement	\$10,000 per repair up to an aggregate of \$50,000 (Ultra premium appliances such as Wolf, Viking and GE Monogram Series up to \$1,000)

Revised 4_2014



SEARS0000587

EXHIBIT 8 to EXHIBIT 2

SUBJECT TO CONFIDENTIALITY
ORDER

DATED JULY 29, 2015

EXHIBIT 9 to EXHIBIT 2

MASTER PROTECTION AGREEMENT

Retain this document as proof of ownership.

This is not a contract of insurance.

In this Master Protection Agreement (hereinafter referred to as "MPA" or "Agreement"), the terms "we," "us," "our" and "Obligor" refer to Sears Protection Company ("SPC"), a wholly-owned subsidiary of Sears, Roebuck and Co. ("Sears"), in states where SPC is the Obligor, Sears in states where Sears is the Obligor, Sears Home Improvement Products, Inc. ("SHIP"), a wholly-owned subsidiary of Sears in states where SHIP is the Obligor, and Sears Roebuck de Puerto Rico, Inc. ("Sears PR"), a wholly-owned subsidiary of Sears, in Puerto Rico. The terms "you" and "your" refer to the purchaser of this MPA. Obligations under this Agreement are backed by the full faith and credit of the Obligor. See Section 16 for a state specific Obligor listing. **ALSO SEE SPECIAL STATE EXCLUSIONS BELOW.**

1. **COVERAGE AND TERM.** Subject to the terms and conditions of this MPA, and during the Term (as that term is hereinafter defined) we will directly pay on your behalf the cost of parts and services performed by a qualified repair provider that we shall designate ("Sears Repair") necessary to maintain the proper operating condition of the product(s) as to which you specifically purchased this MPA to protect (the "Covered Product") as set forth on the reverse side, including repairs necessary due to normal wear and tear of such Covered Product(s). Any parts and service necessitated by a Sears Repair on Covered Product(s) which is then subject to any manufacturer's warranty or manufacturer's recall will be performed by Sears in accordance with the procedures and dictates of such manufacturer's warranty or manufacturer's recall. Parts used to repair out of warranty product(s) may be either new or rebuilt or non-original manufacturer's parts, at our option. Products including those within the original manufacturer's warranty period may be repaired or replaced with a comparable product (which may have a lower selling price than the Covered Product(s)) from a Sears or Sears affiliated store, or, at our discretion, we will issue a credit for the replacement value of the Non-Repairable Covered Product(s), which value could be substantially less than the price paid for the Covered Product(s).

The term of this MPA ("Term") begins on the date coverage was purchased on the Covered Product(s) and expires on the date set forth on the reverse side.

Any manufacturer's warranty period on the Covered Product(s) may run simultaneously with the Term or a portion of the Term, however at no time will the Total Price (as that term is defined in Section 14 of this MPA) you paid for this MPA include the scope of coverage within such coverage time period that is specifically set forth in such manufacturer's warranty as any manufacturer's warranty on the Covered Product(s) is separate and distinct from the coverage being provided to you under this MPA.

THERE ARE CERTAIN LIMITATIONS TO COVERAGE UNDER THIS MPA WHICH ARE SET FORTH IN SECTIONS 2, 12, 13 AND 15 BELOW, INCLUDING CERTAIN SPECIAL STATE PROVISIONS WHICH ARE ALSO SET FORTH BELOW.

2. **ELIGIBILITY FOR COVERAGE.** You represent that the product(s) listed on the reverse side is in proper operating condition at the start of coverage and the information related to "Date Purchased" is correct. Covered Products must have a legible model and serial number. Covered Products without the proper identification will not be eligible for any service under this agreement and this agreement will be cancelled. We reserve the right to inspect the products listed on the reverse side to determine eligibility for coverage. Coverage applies only to products which are located at one (1) address within a single dwelling unit.
3. **DISCOUNT ON NON-COVERED REPAIRS.** On the Covered Product(s), you are entitled to a 10% discount off the regular retail price on any service performed and related installed parts provided by Sears Repair that is not covered by this MPA.
4. **TRANSFERABILITY.** This MPA is transferable to any subsequent owner of the Covered Product(s) subject to the terms and conditions of this MPA.
5. **PREVENTIVE MAINTENANCE.** At your request, we will directly pay Sears Repair to perform one (1) preventive maintenance check-up within any contract year that the Covered Product(s) is covered, under this MPA.
6. **FOOD LOSS REIMBURSEMENT FOR REFRIGERATORS AND FREEZERS.** We will reimburse you up to \$250 within any continuous twelve (12) month period during the Term of this MPA for any food spoilage that is the result of a mechanical failure of the Covered Product(s) that is covered for such food spoilage. The food loss must be verified by us. If the Covered Product at issue is still under a manufacturer's warranty, any



reimbursement under this MPA is in addition to any reimbursement under such manufacturer's warranty. In no case shall the total reimbursement under the manufacturer's warranty and this MPA, in the aggregate, exceed the value of the food loss.

7. **RENTAL REIMBURSEMENT.** In the event that you will be without the use of your Covered Product(s) due to a covered Sears Repair for a period of time that is longer than our original promised completion date, SPC will reimburse you for reasonable rental expenses of a comparable product for a period of time from one (1) day after the original promise date until the covered Sears Repair is completed. For in-home service, original promised completion date is the first date that a technician is scheduled to arrive to perform service on such Covered Product(s). All reimbursements for rental expenses must be pre-authorized by SPC and require copies of original receipts from a vendor approved by SPC along with completed claim forms for such rental. To secure authorization, call 1-800-927-7836.
8. **REPLACEMENT AND NO LEMON GUARANTEE.** If we determine that a Covered Product is not repairable due to unavailability of functional parts or technical information (a "Non-Repairable Covered Product"), you are entitled, at your option, to either: (1) a comparable product replacement based solely on the replacement value of such Non-Repairable Covered Product as determined by us, from a Sears or Sears affiliated store; or (2) a merchandise credit for such Non-Repairable Covered Product based solely upon the comparable product replacement value as determined by us. If neither of the two options in the immediately preceding sentence is selected by you, then SPC may cancel this MPA and refund the Total Price of your current MPA coverage for the Non-Repairable Covered Product. You have up to ninety (90) days from the date of authorization by SPC to select your replacement product. Replacement products may be new or rebuilt to meet the manufacturer's specifications of the original product. We shall not be responsible for reconfiguring space to accommodate replacement product(s) when a product of identical dimensions is not available. **TECHNOLOGICAL ADVANCES AND REPLACEMENT PRODUCT AVAILABILITY MAY RESULT IN A REPLACEMENT PRODUCT WITH A LOWER SELLING PRICE THAN THE ORIGINAL PRODUCT (BEING THE NON-REPAIRABLE COVERED PRODUCT). IN ALL CASES, PRODUCT COMPARABILITY FOR A REPLACEMENT PRODUCT WILL BE DETERMINED BY US AT OUR SOLE DISCRETION.** In accordance with the foregoing provisions, we will also, at your request, replace the Covered Product(s) covered by this MPA in the event of four (4) or more separate product failures, as determined by us, due to a defect in parts or workmanship within any continuous twelve (12) month period that the Covered Product(s) is covered. Product failures for these purposes must include repair or replacement of a functional, non-expendable part, and do not include preventive maintenance, product diagnosis, customer instruction, accessory, cosmetic, or non-functional repair or replacement, or any repair covered under a manufacturer's product recall. Your request for replacement of a Covered Product(s) must occur within sixty (60) days from its fourth (4th) product failure (the "Fourth Failure Time Period"). To secure authorization, call 1-800-927-7836 prior to the expiration of the Fourth Failure Time Period.
9. **COSMETIC DEFECTS COVERAGE.** Cosmetic defects are covered under this MPA for the first three (3) years of ownership of the Covered Product(s) from its purchase date as set forth on the reverse side. Cosmetic defects or cosmetic incompatibility of parts are not eligible for product replacement, they are only eligible for repair. Limitations of coverage still apply. See Section 13 below.
10. **BUSINESS OR COMMERCIAL USE.** A product is "used for business or commercial purposes" if it is used for any purpose other than single family household purposes. Any product not listed in Section 13(c) below that is used for business or commercial purposes may be covered under this Agreement. All products used for business or commercial purposes must have been purchased from a Sears or Sears affiliated store. Central heating and cooling products must also have been installed by a Sears authorized installer with no modifications to the original installation.
11. **TIME AND PLACE OF SERVICE.** Service will be performed during the Sears Repair provider's normal business hours. If, due to the loss of the use of your Covered Product, your health or safety is endangered or if damage to or loss of your property is threatened, we will make commercially reasonable efforts to expedite service. To arrange for service where your Covered Product is located, call 1-800-4-MY-HOME® at any time. For service on digital cameras, computers and other home office equipment, call 1-800-877-8701. On some products, telephone support by a technician will be available and you will be required to check some basic operational functions and be given possible solutions before a technician is dispatched to your home. If the reverse side of this certificate indicates Shop Service, you must bring the Covered Product(s) to a Sears Repair location and pick it up following completed service. In some cases, you will be provided packaging and you must ship the Covered Product to our service provider, at our expense, for repair. For select types of merchandise, we

may transfer Covered Product from your home to a specialized facility in order to complete the repair, at our expense if the Covered Product is covered by an in-home agreement.

12. **SAFETY AND ACCESSIBILITY.** In the event that Sears Repair determines that it cannot service your Covered Product(s) due to poor accessibility or unsafe working conditions or that it cannot restore your Covered Product(s) to safe, working conditions due to reasons beyond the scope of this Agreement, such as, but not limited to, code violations, improper storage, installation, use or movement of the product or equipment, including the failure to place the product or equipment in an area that complies with the manufacturer's published space or environmental requirements, Sears Repair shall not be required to proceed until you remedy the applicable cause.

13. **LIMITATIONS OF COVERAGE. THIS MPA DOES NOT COVER:**

- a. any product located outside the United States, Puerto Rico and Guam. Service is available in Canada provided your Covered Product(s) is CSA certified.
- b. any lawn and garden, gasoline powered or gas grill product.
- c. any floor care, fitness, sewing, coin operative laundry, computer equipment or power tool product used for any business or commercial purposes.
- d. repair of any product which is damaged or malfunctioning due to causes beyond our control including, but not limited to, repairs necessitated by operator or owner negligence (such as the failure to maintain the product according to the owner's manual instructions), improper installation, CRT-based or Plasma television burn-in, accidental damage, abuse, misuse, vandalism, theft, rust, corrosion, animal or insect infestation, damage caused by lightning and acts of nature.
- e. service required as a result of any alteration of the product or equipment or repairs made during the Agreement Term which are not authorized by us, or are made by parties not specifically authorized by us, such as, but not limited to, product(s) that are in a disassembled state.
- f. expendable items, including, but not limited to: any filters, bulbs (micro display lamps are covered) or batteries (camcorder batteries are covered), vacuum cleaner bags, ink jet print heads, printer cartridges or drums, fluids (gasoline, oil, etc.), sewing machine needles, saw blades, and other operating supplies and consumable items.
- g. the following products, parts, and services: installation (other than re-installation required to complete a covered repair, or replacement required under Section 8 of this MPA), antenna systems, pulling and re-installing of deep well, jet or submersible well pumps.
- h. telephone, water, gas, electrical or other lines, drains, or ductwork connecting to the product or equipment. Upgrades to your Covered Product(s), permits or any additional expense incurred in order to comply with local, state or federal building codes and other laws and regulations are your responsibility.
- i. This MPA also does not cover any nonfunctional repairs, parts or cosmetic defects of product(s) purchased as "Reconditioned" or "Used" or purchased at Sears Outlet stores.
- j. coverage to your Covered Product(s) if poor accessibility or unsafe working conditions exist.

The following additional exclusions and limitations specifically apply to computer equipment:

- k. any software, including, but not limited to, application programs, databases, files, source codes, object codes or proprietary data, or any support, configuration, installation or reinstallation of any software or data. You are responsible for backing up copies of all your data and software on a regular basis.
- l. service required as a result of non-compatible software or due to improper software use or software virus.
- m. hardware upgrade(s) not purchased at Sears or Sears PR. Hardware upgrades include memory, hard disk drive, multimedia products, and printer font cartridges. Hardware upgrades purchased at Sears or Sears PR and installed into products and equipment are covered under this MPA. This MPA does not cover installation of hardware upgrades.

14. **CANCELLATION AND REFUNDS.** You may cancel this MPA at any time for any reason by calling 1-800-4-MY-HOME® or by mailing written notice of cancellation to: Cancellation Services, P.O. Box 2570, High Point, NC, 27263. We may cancel this MPA if you fail to pay, make a material misrepresentation, substantially breach your duties under this MPA, or if Sears Repair or its representatives determines that it cannot service or repair your Covered Product(s). We may also cancel this Agreement if the Covered Product(s) does not have a legible model or serial number. We will notify you of any cancellation being made by us for the reasons set forth above in accordance with applicable law and the terms and conditions of this MPA. If this MPA is cancelled by you or us, as the case may be, within the first sixty (60) days of the Term or prior to the expiration of the full manufacturer's warranty for the Covered Product at issue (whichever occurs last), excluding warranties covering component parts of the Covered Product, we will refund 100% of the total price you paid for this MPA (the "Total Price") for the MPA coverage on the Covered Product(s) actually being cancelled. If there is more than one

product being covered under the terms and conditions of this MPA and only one of the products is being cancelled from this Agreement, the Total Price shall mean the price paid for this MPA that is allocated to such product being cancelled as the MPA shall remain in effect for any other Covered Product(s) not the subject of such cancellation. For multiple Covered Product(s) covered by this MPA, refer to your sales receipt for the Total Price itemized allocation on each Covered Product(s).

If this MPA is cancelled after the first sixty (60) days of the Term or after the expiration of the full manufacturer's warranty for the Covered Product at issue (whichever occurs last), excluding warranties covering component parts of the Covered Product, we will refund the Total Price allocable to the remainder of the Term of this MPA prorated on a monthly basis, for the Covered Product that is specifically the subject of such cancellation. Any refund will be made in the same form as the original payment of this MPA.

15. **LIMITATION OF LIABILITY.** EXCEPT AS STATED IN SECTION 6, WE AND OUR AGENTS, CONTRACTORS OR LICENSEES ARE NOT LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, PROPERTY DAMAGE, LOST TIME, LOSS OF USE OF COVERED PRODUCT(S) OR ANY OTHER DAMAGES RESULTING FROM THE BREAKDOWN OR FAILURE OF COVERED PRODUCT(S), DELAYS IN SERVICING OR THE INABILITY TO SERVICE ANY COVERED PRODUCT(S) EXCEPT AS MAY OTHERWISE BE REQUIRED BY LAW.

UNDER NO CIRCUMSTANCES WHATSOEVER SHALL THE OBLIGATIONS OF OBLIGOR UNDER THIS MPA TO YOU FOR MONETARY RECOVERY EXCEED THE TOTAL PRICE PAID FOR THE COVERED PRODUCT(S) UNDER THIS MPA.

16. **OBLIGOR.** The Obligor of this Agreement shall be determined by the ultimate location of the Covered Product(s) covered by this Agreement at the time of sale. For Covered Products located in California, SPC shall be the Obligor for the following products: home electronics, appliances, power tools and fitness equipment. For HVAC equipment located in California and purchased from SHIP, SHIP shall be the Obligor. For all other Covered Products in California, Sears shall be the Obligor. In Puerto Rico, Sears PR is the Obligor. In all other states, SPC shall be the Obligor.
17. **RENEWAL.** No party is obligated to renew this MPA beyond the expiration date of the Term. The Total Price paid by you for this MPA may change or increase upon a renewal of this MPA. By purchasing this Agreement, you agree that Sears may call you to notify you of renewals terms and upgrade plans for this MPA.
18. **PUERTO RICO, CALIFORNIA, NEW MEXICO, WYOMING AND NEW YORK CUSTOMERS.** A 10% penalty per month shall be added to any refund that we fail to make within thirty (30) days of your cancellation of this Agreement and request for a refund.
19. **UTAH CUSTOMERS.** Coverage under this Agreement is not guaranteed by the Property and Casualty Guaranty Association. In the event of cancellation of this Agreement by Obligor in accordance with the "Cancellation and Refunds" provisions above, Utah residents will receive thirty (30) day prior written notice of cancellation. There is no deductible applied for the performance of this Agreement.
20. **KENTUCKY AND VIRGINIA CUSTOMERS.** If we fail to pay any valid claim within sixty (60) days of proof of loss, you may make a claim directly against Safeco Insurance Company of America, Safeco Plaza, Seattle, WA 98185.
21. **INDIANA AND WEST VIRGINIA CUSTOMERS.** This Agreement is not an insurance policy and is not regulated by the Departments of Insurance for the states of Indiana and West Virginia.
22. **IOWA CUSTOMERS.** Obligor is subject to regulation by the insurance division of the Iowa Department of Commerce. Complaints that are not settled by us may be sent to the insurance division
23. **TEXAS CUSTOMERS.** Any questions concerning the regulation of us under this Agreement or any unresolved complaints may be directed to the Texas Department of Licensing and Regulations - P.O. Box 12157 Austin, Texas 78711 or (512) 463-6599.
24. **SOUTH CAROLINA CUSTOMERS.** Any questions concerning the regulation of us under this Agreement or any unresolved complaints (within sixty (60) days of proof of loss) may be directed to the South Carolina Department of Insurance - P.O. Box 100105 Columbia, South Carolina 29202-3105 or (800) 758-3467. A 10% penalty per

month shall be added to any refund that we fail to make within forty-five (45) days after the return of the Agreement to the provider.

25. NORTH CAROLINA CUSTOMERS. Upon cancellation a reasonable administrative fee not to exceed 10% of the pro rata refund may be charged. Obligor must notify the consumer before the purchase of this Agreement that its purchase is not necessary in order to purchase or obtain financing of the Covered Product.
26. ALABAMA CUSTOMERS. A 10% penalty per month shall be added to any refund that we fail to make within forty-five (45) days of your cancellation of this Agreement and request for a refund. This Agreement will not charge a deductible for services rendered.
27. GEORGIA CUSTOMERS. Notwithstanding the CANCELLATION AND REFUNDS section, we will only cancel this Agreement for fraud, material misrepresentation or nonpayment of amounts due under this Agreement. We will mail to you a written notice at least ten (10) days prior to the date of cancellation for nonpayment, or at least thirty (30) days prior to the date of cancellation for fraud or material misrepresentation. Obligor will not provide services under this Agreement if poor accessibility or unsafe working conditions exist, but these conditions are not grounds for cancellation. Nothing contained in any provision elsewhere in this Agreement shall affect your right to make a claim directly against Safeco Insurance Company of America if we fail to pay any valid claim within sixty (60) days. The claim should be sent to Safeco Insurance Company of America, Safeco Plaza, Seattle, WA 98185 or (847) 490-2320 Attn: Ms. Ann Hester.
28. MINNESOTA CUSTOMERS. In the event of cancellation of this Agreement by us in accordance with the "Cancellation and Refunds" provision above, Minnesota residents will receive five (5) days prior written notice of cancellation if for reason of nonpayment, material misrepresentation or substantial breach of duties, or at least fifteen (15) days for all other reasons. A 10% penalty per month shall be added to any refund that we fail to make within forty-five (45) days of your cancellation of this Agreement and request for a refund.
29. NEW HAMPSHIRE CUSTOMERS. In the event that you do not receive satisfaction under this Agreement, you may contact the New Hampshire Insurance Department, 21 South Fruit Street, Suite 14, Concord, NH 03301; telephone 1-800-852-3416; e-mail consumerinquiries@ins.nh.gov.
30. ARKANSAS CUSTOMERS: In the event of cancellation of this Agreement by us in accordance with the "Cancellation and Refunds" provision above, Arkansas residents will receive fifteen (15) days prior written notice of cancellation for reasons other than for nonpayment, material misrepresentation or substantial breach of duties. A 10% penalty per month shall be added to any refund that we fail to make within forty-five (45) days of your cancellation of this Agreement and request for a refund.
31. WASHINGTON CUSTOMERS: In the event of cancellation of this Agreement by us in accordance with the "Cancellation and Refunds" provision above, Washington residents will receive twenty-one (21) days prior written notice of cancellation for reasons other than for nonpayment, material misrepresentation or substantial breach of duties. A 10% penalty per month shall be added to any refund that we fail to make within forty-five (45) days of your cancellation of this Agreement and request for a refund.

Sears Protection Company, Obligor, Dept. 702SRC, 3333 Beverly Road, Hoffman Estates, IL 60179
Sears, Roebuck and Co., Obligor, Dept. 702SRC, 3333 Beverly Road, Hoffman Estates, IL 60179
Sears, Roebuck de Puerto Rico, Inc., Obligor, 9410 Los Romeros Ave., San Juan, Puerto Rico 00925
Sears Home Improvement Products, Inc., Obligor, 1024 Florida Central Parkway, Longwood, FL 32750

National MPA AM E Jan2010

FORM 4/G

National MPA AM E Jan2010

FORM 4/G

SEARS00000444

EXHIBIT 10 to EXHIBIT 2

SUBJECT TO CONFIDENTIALITY
ORDER

DATED JULY 29, 2015

EXHIBIT 11 to EXHIBIT 2

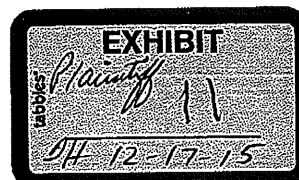
Eligible Brands List**Eligible PA Products & Brands**

In order to sell a Protection Agreement, the following products must be purchased from Sears:

- 1 Gas Grills
- 2 Hardware / Workshop
- 3 Home Office Equipment
- 4 Lawn & Garden Equipment (Division 71)
- 5 Pumps - Sump & Well
- 6 Projection TV's
- 7 Digital Cameras
- 8 Water Treating Equipment - Distillers, Filters & Softeners

NordicTrack Fitness products are NOT eligible for Protection Agreement coverage, regardless of purchase location.

Home Office Equipment				
Computer	Fax/Copier/Printer	Modem	Monitor	Typewriter
+	COMPAQ	COMPAQ	APPLE	COMPAQ
3COM	DELL	DELL	COMPAQ	DELL
ACER	EPSON	HP	DELL	HP
APPLE	HP		GATEWAY	SONY
ASUS	IBM		HP	
ATI	PANASONIC		IBM	
AVERATEC	SAMSUNG		NEC	
CASIO	SONY		SONY	
CISNET	TOSHIBA			
COMPAQ				
CREATIVE LAB				
DELL				
EMA				
EMACHINES				
GATEWAY				
HP				
IBM				
INFOCUS				
LENOVO				
LIQUID VIDEO				
LITE-ON				
MIRUS				
MSI				
SAMPO				
SONY				
TOSHIBA				
VELOCITY				
VIEWSONIC				
Recreational				
Exerciser	Treadmill			
AFG	AFG			
BODY BY JAKE	BH			
BOWFLEX	BODY BY JAKE			
DIAMONDBACK	BOWFLEX			
HEALTH RIDER	HEALTH RIDER			
HORIZON	HORIZON			
IMAGE	IMAGE			
LIFESTYLER	LIFESTYLER			
PROFORM	PROFORM			
REEBOK	REEBOK			
SEARS	SEARS			
VELOPRO	WEIDER			
WEIDER	WESLO			
WESLO				
Workshop / Hardware & Garage Door Openers				



SEARS0000516

	Drill Press/Sander/Saw, Joiner/Planer/Shaper,				
Air Compressor	Power Washer	Generator	Cleaning & Router	Welder	Garage Door Opener
BLACK&DECKER	BLACK&DECKER	AGRIFAB	BLACK&DECKER	BLACK&DECKER	CHAMBERLAIN
BOSCH	BOSCH	ARIENS	BOSCH (Cleaning Only)	BOSCH	CRAFTSMAN
CAMPBLHSFLD	CRAFTSMAN	BLACK&DECKER	CRAFTSMAN (Cleaning Only)	CRAFTSMAN	CRAFTSMANPRO
CRAFTSMAN	CRAFTSMANPRO	BRIGGS&STRAT	DELTA (Cleaning Only)	CRAFTSMANPRO	GENIE
DELTA	DELTA	COMPANION	DEWALT (Cleaning Only)	DELTA	SEARS
DEWALT	DEWALT	CRAFTSMAN	MAKITA (Cleaning Only)	DEWALT	
INGERSOLLRND	GENERAC	CRAFTSMANPRO	MILWAUKEE (Cleaning Only)	MAKITA	
MAKITA	MAKITA	GENERAC	PORTERCABLE (Cleaning Only)	MILWAUKEE	
MILWAUKEE	MILWAUKEE	HOMELITE	SEARS (Cleaning Only)	PORTERCABLE	
PORTERCABLE	PORTERCABLE	HONDA	WAGNER (Cleaning Only)	SEARS	
SEARS	SEARS	HUSQVARNA	BLACK&DECKER (Cleaning Only)	WAGNER	
SKIL	SKIL	KAWASAKI	COBALT (Cleaning Only)		
WAGNER	WAGNER	KOHLER	ROTOZIP (Cleaning Only)		
		LAWNBOY	TRADESMAN (Cleaning Only)		
		LIFETIME			
		MACKISSIC			
		MANTIS			
		MCCLANE			
		MCCULLOCH			
		MURRAY			
		OHIOSTEEL			
		POULAN			
		ROBINS/SUBARU			
		SEARS			
		SNOWKING			
		TECUMSEH			
		WEEDEATER			
Heating and Cooling					
Central A/C	Window A/C	Air Treatment	Furnace	Boiler	Space, Floor & Wall Furnace
ADDISON	ADDISON	ADDISON	ADDISON	ADDISON	ADDISON
ADOBEAIR	ADOBEAIR	ADOBEAIR	ADOBE	ADOBEAIR	ADOBE
AIR QUEST	AIR QUEST	AIR QUEST	ADOBEAIR	AIR QUEST	ADOBEAIR
AMANA	AMANA	AMERICAN STD	AIR QUEST	AMERICAN STD	AIR QUEST
AMERICAN STD	AMERICAN STD	APRILAIRE	AMANA	ARCOAIRE	AMERICAN STD
APRILAIRE	APRILAIRE	ARCOAIRE	AMERICAN STD	ARMSTRONG	ARCOAIRE
ARCOAIRE	ARCOAIRE	ARMSTRONG	ARCOAIRE	BARD	ARMSTRONG
ARMSTRONG	ARMSTRONG	BARD	ARMSTRONG	BRYANT	BARD
BARD	BARD	BRYANT	BARD	COMFORTGLOW	BRYANT
BRYANT	BRYANT	COMFORTGLOW	BRYANT	COMFORTMAKER	COMFORTGLOW
CARRIER	CARRIER	COMFORTMAKER	CARRIER	DAY & NIGHT	COMFORTMAKER
COLEMAN	COLEMAN	DAY & NIGHT	COLEMAN	DUNKIRK	DAY & NIGHT
COMFORTGLOW	COMFORTGLOW	DELONGHI	COMFORTGLOW	GE	GE
COMFORTMAKER	COMFORTMAKER	DYNAMIC	COMFORTMAKER	GOODMAN	GOODMAN
DAY & NIGHT	DAY & NIGHT	FEDDERS	DAY & NIGHT	HEIL-QUAKER	HEIL-QUAKER
DELONGHI	EMERSON	FRIGIDAIRE	GE	ICP	ICP
FEDDERS	FEDDERS	GE	GOODMAN	INTERCITY	INTERCITY

FRIGIDAIRE	FRIGIDAIRE	GOODMAN	HEIL-QUAKER	INTL CMF PRD	INTL CMF PRD
GE	GE	HEIL-QUAKER	ICP	JANITROL	JANITROL
GOODMAN	GOODMAN	HONEYWELL	INTERCITY	KEEPRITE	KEEPRITE
HEIL-QUAKER	HEIL-QUAKER	ICP	INTL CMF PRD	KENMORE	KENMORE
ICP	ICP	INTERCITY	JANITROL	LUXAIRE	LUXAIRE
INTERCITY	INGLIS	INTL CMF PRD	KEEPRITE	MAGIC CHEF	MAGIC CHEF
INTL CMF PRD	INTL CMF PRD	JANITROL	KENMORE	NORDYNE	NORDYNE
JANITROL	JANITROL	KEEPRITE	LENNOX	ONEIDA ROYAL	PANASONIC
KEEPRITE	KEEPRITE	KENMORE	LUXAIRE	PANASONIC	RHEEM
KENMORE	KENMORE	LG	MAGIC CHEF	RHEEM	RUUD
LENNOX	LG	LUXAIRE	NORDYNE	RUUD	SEARS
LG	LUXAIRE	MAGIC CHEF	PANASONIC	SEARS	SINGER
LUXAIRE	MAGIC CHEF	NORDYNE	PAYNE	SINGER	SNYDER GENER
MAGIC CHEF	NORDYNE	PANASONIC	RHEEM	SNYDER GENER	STYLECREST
MAGICPAK	PANASONIC	PAYNE	RUUD	STYLECREST	TAPPAN
MASTER COOL	PAYNE	RHEEM	SEARS	TAPPAN	TEMPSTAR
MASTERCOOL	RHEEM	RUUD	SINGER	TEMPSTAR	WEATHERKING
MIDEA	ROYAL SOVERE	SEARS	SNYDER GENER	WEATHERKING	WESTINGHOUSE
mitsubishi	RUUD	SINGER	STYLECREST	WESTINGHOUSE	WHIRLPOOL
NORDYNE	SEARS	SNYDER GENER	TAPPAN	WHIRLPOOL	WILLIAMS
PANASONIC	SINGER	STYLECREST	TEMPSTAR	WILLIAMS	WILLIAMSON
PAYNE	SNYDER GENER	TAPPAN	TRANE	YORK	YORK
RHEEM	SOLEUS AIR	TEMPSTAR	WEATHERKING	ZONAIRE	ZONAIRE
RUUD	STYLECREST	TRANE	WESTINGHOUSE		
SEARS	TAPPAN	WEATHERKING	WHIRLPOOL		
SINGER	TEMPSTAR	WESTINGHOUSE	WILLIAMS		
SNYDER GENER	TOYOTOMI	WHIRLPOOL	YORK		
SPACE PAC	TRANE	WILLIAMS	ZONAIRE		
STYLECREST	WEATHERKING	YORK			
TAPPAN	WESTINGHOUSE	ZONAIRE			
TEMPSTAR	WHIRLPOOL				
TRANE	WILLIAMS				
WEATHERKING	YORK				
WESTINGHOUSE	ZONAIRE				
WHIRLPOOL					
WILLIAMS					
YORK					
ZONAIRE					
Cooking Products					
Cooktop	Range	Rangehood	Waloven	Warming Drawer	Microwave
ADMIRAL	ADMIRAL	ADMIRAL	ADMIRAL	ADMIRAL	ADMIRAL
AMANA	AMANA	AMANA	AMANA	AMANA	AMANA
APOLLO	APOLLO	APOLLO	APOLLO	BOSCH	APOLLO
BOSCH	BOSCH	BOSCH	BOSCH	CALORIC	BOSCH
CALORIC	CALORIC	BROAN	CALORIC	ELCTRLX ICON	CALORIC
ELCTRLX ICON	ELCTRLX ICON	CALORIC	ELCTRLX ICON	ELECTROLUX	CROSLEY
ELECTROLUX	ELECTROLUX	ELCTRLX ICON	ELECTROLUX	ESTATE	ELCTRLX ICON
ESTATE	ESTATE	ELECTROLUX	ESTATE	FISHERPAYKEL	ELECTROLUX
FISHERPAYKEL	FISHERPAYKEL	ESTATE	FISHERPAYKEL	FRIGIDAIRE	ESTATE
FRIGIDAIRE	FRIGIDAIRE	FISHERPAYKEL	FRIGIDAIRE	GALAXY	FISHERPAYKEL
GALAXY	GALAXY	FRIGIDAIRE	GALAXY	GALLERY	FRIGIDAIRE
GALLERY	GALLERY	GALAXY	GALLERY	GE	GALAXY
GE	GE	GALLERY	GE	GE PROFILE	GALLERY
GE PROFILE	GE PROFILE	GE	GE PROFILE	GIBSON	GE
GIBSON	GIBSON	GE PROFILE	GIBSON	HAIER	GE PROFILE
HAIER	HAIER	GIBSON	HAIER	HOTPOINT	GIBSON
HOTPOINT	HOTPOINT	HAIER	HOTPOINT	IKEA	GOLDSTAR
IKEA	IKEA	HOTPOINT	IKEA	INGLIS	HAIER
INGLIS	INGLIS	IKEA	INGLIS	JENN-AIR	HOTPOINT
JENN-AIR	JENN-AIR	INGLIS	JENN-AIR	KELVINATOR	IKEA
KELVINATOR	KELVINATOR	JENN-AIR	KELVINATOR	KENMORE	INGLIS
KENMORE	KENMORE	KELVINATOR	KENMORE	KENMORE ELIT	JENN-AIR
KENMORE ELIT	KENMORE ELIT	KENMORE	KENMORE ELIT	KENMORE PRO	KELVINATOR
KENMORE PRO	KENMORE PRO	KENMORE ELIT	KENMORE PRO	KITCHENAID	KENMORE
KITCHENAID	KITCHENAID	KENMORE PRO	KITCHENAID	LG	KENMORE ELIT

LG	LG	KITCHENAID	LG	MAGIC CHEF	KENMORE PRO
MAGIC CHEF	MAGIC CHEF	LG	MAGIC CHEF	MAYTAG	KITCHENAID
MAYTAG	MAYTAG	MAGIC CHEF	MAYTAG	MODERN MAID	LG
MODERN MAID	MODERN MAID	MAYTAG	MODERN MAID	NORGE	MAGIC CHEF
NORGE	NORGE	MODERN MAID	NORGE	ROPER	MAYTAG
ROPER	ROPER	NORGE	ROPER	SEARS	MODERN MAID
SEARS	SAMSUNG	ROPER	SEARS	SHARP	NORGE
SHARP	SEARS	SEARS	SHARP	TAPPAN	PANASONIC
TAPPAN	SHARP	TAPPAN	TAPPAN	WCI	ROPER
WCI	TAPPAN	WHIRLPOOL	WCI	WHIRLPOOL	SAMSUNG
WHIRLPOOL	WHIRLPOOL		WHIRLPOOL		SANYO

SEARS
SHARP
TAPPAN
WCI
WHIRLPOOL

Compactor, Dishwasher & Disposer

Compactor	Dishwasher	Disposer
ADMIRAL	ADMIRAL	ADMIRAL
AMANA	AMANA	AMANA
BOSCH	BOSCH	BOSCH
BROAN	CALORIC	ELCTRLX ICON
ELCTRLX ICON	ELCTRLX ICON	ELECTROLUX
ELECTROLUX	ELECTROLUX	EMERSON
ESTATE	ESTATE	ESTATE
FRIGIDAIRE	FISHERPAYKEL	FRIGIDAIRE
GALAXY	FRIGIDAIRE	GE
GALLERY	GALAXY	GE PROFILE
GE	GALLERY	GIBSON
GE PROFILE	GE	HOTPOINT
GIBSON	GE PROFILE	IKEA
GLADIATOR	GIBSON	INGLIS
HOTPOINT	GLADIATOR	INSINKERATOR
IKEA	HAIER	JENN-AIR
INGLIS	HOTPOINT	KELVINATOR
JENN-AIR	IKEA	KENMORE
KELVINATOR	INGLIS	KENMORE ELIT
KENMORE	JENN-AIR	KENMORE PRO
KENMORE ELIT	KELVINATOR	KITCHENAID
KENMORE PRO	KENMORE	LG
KITCHENAID	KENMORE ELIT	MAYTAG
LG	KENMORE PRO	MODERN MAID
MAYTAG	KITCHENAID	NORGE
MODERN MAID	LG	ROPER
NORGE	MAGIC CHEF	SEARS
ROPER	MAYTAG	TAPPAN
SEARS	MODERN MAID	WHIRLPOOL
TAPPAN	NORGE	
WHIRLPOOL	ROPER	
	SAMSUNG	
	SEARS	
	SHARP	
	TAPPAN	
	WHIRLPOOL	

Laundry

Washer	Dryer	Dryer Cabinet	Dispenser	Iron Center
ADMIRAL	ADMIRAL	ADMIRAL	ADMIRAL	ADMIRAL
AMANA	AMANA	AMANA	AMANA	AMANA
BOSCH	BOSCH	BOSCH	BOSCH	BOSCH
ELCTRLX ICON	ELCTRLX ICON	ELCTRLX ICON	ELCTRLX ICON	ELCTRLX ICON
ELECTROLUX	ELECTROLUX	ELECTROLUX	ELECTROLUX	ELECTROLUX
ESTATE	ESTATE	ESTATE	ESTATE	ESTATE
FISHERPAYKEL	FISHERPAYKEL	FISHERPAYKEL	FRIGIDAIRE	FRIGIDAIRE
FRIGIDAIRE	FRIGIDAIRE	FRIGIDAIRE	GALAXY	GALAXY

GALAXY	GALAXY	GALAXY	GALLERY	GALLERY
GALLERY	GALLERY	GALLERY	GE	GE
GE	GE	GE	GE PROFILE	GIBSON
GE PROFILE	GE PROFILE	GE PROFILE	GIBSON	HOTPOINT
GIBSON	GIBSON	GIBSON	HOTPOINT	IKEA
HAIER	HAIER	HOTPOINT	IKEA	INGLIS
HOTPOINT	HOTPOINT	IKEA	INGLIS	JENN-AIR
IKEA	IKEA	INGLIS	JENN-AIR	KELVINATOR
INGLIS	INGLIS	JENN-AIR	KELVINATOR	KENMORE
JENN-AIR	JENN-AIR	KELVINATOR	KENMORE	KENMORE ELIT
KELVINATOR	KELVINATOR	KENMORE	KENMORE ELIT	KENMORE PRO
KENMORE (including SDS)	KENMORE (including SDS)	KENMORE ELIT	KENMORE PRO	KITCHENAID
KENMORE ELIT (including SDS)	KENMORE ELIT (including SDS)	KENMORE PRO	KITCHENAID	LG
KENMORE PRO	KENMORE PRO	KITCHENAID	LG	MAYTAG
KITCHENAID	KITCHENAID	MAYTAG	MAYTAG	MODERN MAID
LG (including SDS)	LG (including SDS)	MODERN MAID	MODERN MAID	NORGE
MAGIC CHEF	MAGIC CHEF	NORGE	NORGE	ROPER
MAYTAG	MAYTAG	ROPER	ROPER	SEARS
MODERN MAID	MODERN MAID	SEARS	SEARS	TAPPAN
NORGE	NORGE	TAPPAN	TAPPAN	WCI
ROPER	ROPER	WCI		
SAMSUNG	SAMSUNG			
SEARS	SEARS			
TAPPAN	TAPPAN			
WHIRLPOOL	WHIRLPOOL			

Water Equipment

Water Heater	Water Treatment	Pump
ACE	ACE	CRAFTSMAN
AMBASSADOR	AMBASSADOR	CRAFTSMANPRO
AMERICAN	AMERICAN	SIMER
AOSMITH	AOSMITH	
GE	ECODYNE	
KENMORE	ECOWATER	
KENMORE ELIT	KENMORE	
MARATHON	KENMORE ELIT	
MAYTAG	MARATHON	
RELIANCE	MAYTAG	
REXEL	RELIANCE	
RHEEM	REXEL	
RUUD	RHEEM	
SEARS	RUUD	
SENTRY	SEARS	
STATE	SENTRY	
SUPERIOR	STATE	
THE BOSS	SUPERIOR	
THERMO-KING	THE BOSS	
WHEELERS	THERMO-KING	
WHIRLPOOL	WHEELERS	
	WHIRLPOOL	

Refrigeration

Refrigerator	Beer Cooler	Freezer	Icemaker	Wine Cooler
ADMIRAL	ADMIRAL	ADMIRAL	ADMIRAL	ADMIRAL
AMANA	AMANA	AMANA	AMANA	AMANA
AMERICAN	BOSCH	AMERICAN	BOSCH	BOSCH
BOSCH	ELCTRLX ICON	BOSCH	ELCTRLX ICON	ELCTRLX ICON
DANBY	ELECTROLUX	DANBY	ELECTROLUX	ELECTROLUX
ELCTRLX ICON	ESTATE	ELCTRLX ICON	ESTATE	ESTATE
ELECTROLUX	FRIGIDAIRE	ELECTROLUX	FRIGIDAIRE	FRIGIDAIRE
ESTATE	GE	ESTATE	GALAXY	GALAXY
FISHERPAYKEL	GE PROFILE	FRIGIDAIRE	GALLERY	GALLERY
FRIGIDAIRE	GIBSON	GALAXY	GE	GE
GALAXY	HAIER	GALLERY	GE PROFILE	GE PROFILE

GALLERY	HOTPOINT	GE	GIBSON	GIBSON
GE	IKEA	GE PROFILE	HOTPOINT	HOTPOINT
GE PROFILE	INGLIS	GIBSON	IKEA	IKEA
GIBSON	JENN-AIR	GLADIATOR	INGLIS	INGLIS
GLADIATOR	KELVINATOR	HAIER	JENN-AIR	JENN-AIR
HAIER	KENMORE	HOTPOINT	KELVINATOR	KELVINATOR
HOTPOINT	KENMORE ELIT	IKEA	KENMORE	KENMORE
IKEA	KENMORE PRO	IMPERIAL	KENMORE ELIT	KENMORE ELIT
INGLIS	KITCHENAID	INGLIS	KENMORE PRO	KENMORE PRO
JENN-AIR	LG	JENN-AIR	KITCHENAID	KITCHENAID
KELVINATOR	MAYTAG	KELVINATOR	LG	LG
KENMORE (including SDS)	MODERN MAID	KENMORE	MAGIC CHEF	MAGIC CHEF
KENMORE ELIT (including SDS)	NORGE	KENMORE ELIT	MAYTAG	MAYTAG
KENMORE PRO	ROPER	KENMORE PRO	MODERN MAID	MODERN MAID
KITCHENAID	SEARS	KITCHENAID	NORGE	NORGE
LG (including SDS)	TAPPAN	LG	ROPER	ROPER
MAGIC CHEF	WHIRLPOOL	MAGIC CHEF	SEARS	SEARS
MAYTAG		MAYTAG	TAPPAN	TAPPAN
MODERN MAID		MODERN MAID	WHIRLPOOL	WHIRLPOOL
NORGE		NORGE		
ROPER		ROPER		
SAMSUNG		SAMSUNG		
SANYO		SANYO		
SEARS		SEARS		
TAPPAN		TAPPAN		
WHIRLPOOL		WHIRLPOOL		

Electronics

Audio	Camcorder	Digital Camera	Home Theater & Players/Recorders	Television	TV/Player
Audio Video System					
Cassette Player					
Compact Disc - Play/Record					
Equalizer					
Receiver					
Speaker(s)					
Stereo System					
Turntable					
AIWA	BOSE	CANON	BOSE	ELEMENT	FUNAI
BOSE	CANON	CASIO	FUNAI	FISHER	GE
CERWIN VEGA	FUNAI	FUNAI	GE	FUNAI	GOLDSTAR
DENON	GE	GE	GO VIDEO (VCR Only)	GE	HAIER
FISHER	GOLDSTAR	GOLDSTAR	GOLDSTAR	GOLDSTAR	HITACHI
FUNAI	HAIER	HAIER	HAIER	HAIER	JVC
GE	HITACHI	HITACHI	HITACHI	HITACHI	LG
GOLDSTAR	JVC	JVC	JVC	JVC	LXI
HAIER	LG	KODAK	LG	LG	MAGNAVOX
HARMAN KARDO	LXI	LG	LXI	LXI	MEMOREX
HARMON KARDO	MAGNAVOX	LXI	MAGNAVOX	MAGNAVOX	MITSUBISHI
HITACHI	MEMOREX	MAGNAVOX	MEMOREX	MEMOREX	PANASONIC
INFINITY	MITSUBISHI	MEMOREX	MITSUBISHI	MITSUBISHI	PHILIPS
JBL	PANASONIC	MITSUBISHI	PANASONIC	NEC	PROSCAN
JENSEN	PHILIPS	NIKON	PHILIPS	PANASONIC	QUASAR
JVC	PROSCAN	PANASONIC	PIONEER	PHILIPS	RCA
KENWOOD	QUASAR	PHILIPS	PROSCAN	PIONEER	SAMSUNG
LG	RCA	POLAROID	QUASAR	PROSCAN	SANSUI
LXI	SAMSUNG	PROSCAN	RCA	QUASAR	SEARS
MAGNAVOX	SEARS	QUASAR	SAMSUNG	RCA	SHARP
MEMOREX	SHARP	RCA	SEARS	SAMSUNG	SONY
MITSUBISHI	SONY	SAMSUNG	SHARP	SANSUI	SYLVANIA
ONKYO	SYLVANIA	SHARP	SONY	SEARS	SYMPHONIC
ORION	SYMPHONIC	SONY	SYLVANIA	SEIKI	TOSHIBA
PANASONIC	TOSHIBA	SYLVANIA	SYMPHONIC	SHARP	VENTURER

PHILIPS	VIZIO	SYMPHONIC	TOSHIBA	SONY	VIORE
PIONEER	YORX	TOSHIBA	VIZIO	SYLVANIA	VIZIO
POLK AUDIO	ZENITH	VIZIO	YORX	SYMPHONIC	YORX
PROSCAN		YORX	VENTURER (VCR Only)	TOSHIBA	ZENITH
QUASAR		ZENITH	ZENITH	VENTURER	
RCA				VIORE	
SAMSUNG				VIZIO	
SANSUI				YORX	
SEARS (VCR Only)				ZENITH	
SHARP					
SONY					
SYLVANIA					
SYMPHONIC					
TECHNICS					
TOSHIBA					
VIZIO					
YAMAHA					
YORX					
ZENITH					

Lawn and Garden

Lawn Mower / Riding Mower / Tractor	Snow Thrower / Gas Attachment	Brush Wacker / Chain Saw / Chipper Shredder / Edge Trimmer / Log Splitter / Tiller / Weed Wacker	Blower	Grill
AGRIFAB	AGRIFAB	AGRIFAB	AGRIFAB	CHAR-BROIL
ALLPOWER	ARIENS	ARIENS	ARIENS	COLEMAN
ARIENS	BLACK&DECKER	BLACK&DECKER	BLACK&DECKER	FIESTA
BLACK&DECKER	BRIGGS&STRAT	BRIGGS&STRAT	BRIGGS&STRAT	KENMORE
BRIGGS&STRAT	CRAFTSMAN	CRAFTSMAN	CRAFTSMAN	KENMORE ELIT
CRAFTSMAN	CRAFTSMANPRO	CRAFTSMANPRO	EAGER 1	KITCHENAID
CRAFTSMANPRO	EAGER 1	EAGER 1	GENERAC	NEXGRILL
EAGER 1	GENERAC	GENERAC	HOMELITE	SEARS
GENERAC	HOMELITE	HOMELITE	HONDA	SUNBEAM
HOMELITE	HONDA	HONDA	HUSQVARNA	THERMOS
HONDA	HUSQVARNA	HUSQVARNA	KAWASAKI	
HUSQVARNA	KAWASAKI	KAWASAKI	KOHLER	
KAWASAKI	KOHLER	KOHLER	LAWNBOY	
KOHLER	LAWNBOY	LAWNBOY	LIFETIME	
LAWNBOY	LIFETIME	LIFETIME	MACKISSIC	
LIFETIME	MACKISSIC	MACKISSIC	MANTIS	
MACKISSIC	MANTIS	MANTIS	MCCLANE	
MANTIS	MCCLANE	MCCLANE	MCCULLOCH	
MCCLANE	MCCULLOCH	MCCULLOCH	MURRAY	
MCCULLOCH	MURRAY	MURRAY	OHIOSTEEL	
MURRAY	OHIOSTEEL	OHIOSTEEL	POULAN	
OHIOSTEEL	POULAN	POULAN	ROBINS/SUBARU	
POULAN	ROBINS/SUBARU	ROBINS/SUBARU	SEARS	
ROBINS/SUBARU	SEARS	SEARS	SNOWKING	
SEARS	SNAPPER (Snow Thrower Only)	SNOWKING	SWISHER	
SNAPPER	SNOWKING	TECUMSEH	TECUMSEH	
SNOWKING	SWISHER	WEEDEATER	WEEDEATER	
SWISHER	TECUMSEH			
TECUMSEH	WEEDEATER			
WEEDEATER				
YARDMAN (Riding Mower / Tractor Only)				

Sears, Kmart, The Great Indoors and High-End Merchandise

The following is a list of merchandise codes and brands sold at Sears, Kmart or The Great Indoors (TGI) or are otherwise considered High-End. These products are eligible for PA coverage AT THE TIME OF SALE ONLY. You are **NOT** able to sell PA's on these items in the Aftermarket. The following documentation is for informational puposes only.

Currently covered items cannot be bundled, upsold, or renewed.

Game Tables & Scooters

Game Table	Power Vehicle	Scooter
DMI SPORTS	AMERICAN SPO	BAJA MOTOR
SPORTCRAFT	EAGER 1	E-MOTO

Cooking

Oven	Cooktop	Warming Drawer	Range	Range Hood	Microwave
AGA	AGA	AGA	AGA	AGA	AGA
BEST	BEST	BEST	BEST	BEST	BEST
BROAN	BROAN	BROAN	BROAN	BROAN	BROAN
DACOR	DACOR	DACOR	DACOR	DACOR	DACOR
DYNAMIC COOKING SYSTEMS (DCS)	DYNAMIC COOKING SYSTEMS (DCS)	DYNAMIC COOKING SYSTEMS (DCS)	DYNAMIC COOKING SYSTEMS (DCS)	DYNAMIC COOKING SYSTEMS (DCS)	DYNAMIC COOKING SYSTEMS (DCS)
DYNASTY	DYNASTY	DYNASTY	DYNASTY	DYNASTY	DYNASTY
FIVE STAR	FIVE STAR	FIVE STAR	FIVE STAR	FIVE STAR	FIVE STAR
GAGGENAU	GAGGENAU	GAGGENAU	GAGGENAU	GAGGENAU	GAGGENAU
GARLAND	GARLAND	GARLAND	GARLAND	GARLAND	GARLAND
MIELE	MIELE	MIELE	MIELE	MIELE	MIELE
MONOGRAM	MONOGRAM	MONOGRAM	MONOGRAM	MONOGRAM	MONOGRAM
THERMADOR	THERMADOR	THERMADOR	THERMADOR	THERMADOR	THERMADOR
VENMAR	VENMAR	VENMAR	VENMAR	VENMAR	VENMAR
VENT-A-HOOD	VENT-A-HOOD	VENT-A-HOOD	VENT-A-HOOD	VENT-A-HOOD	VENT-A-HOOD
VIKING	VIKING	VIKING	VIKING	VIKING	VIKING
WOLF	WOLF	WOLF	WOLF	WOLF	WOLF
ZEPHYR	ZEPHYR	ZEPHYR	ZEPHYR	ZEPHYR	ZEPHYR

Dishwasher & Compactors

Compactor	Dishwasher
ASKO	ASKO
DACOR	DACOR
GAGGENAU	GAGGENAU
MONOGRAM	MONOGRAM
THERMADOR	THERMADOR
VIKING	VIKING

Laundry

Dryer	Washer
ASKO	ASKO
EQUATOR	EQUATOR
LG	LG

Refrigeration

Dispenser	Freezer	Humidor	Ice Maker	Refrigerator	Wine Cooler
EQUATOR	EQUATOR	EQUATOR	EQUATOR	EQUATOR	EQUATOR
DACOR	DACOR	DACOR	DACOR	DACOR	DACOR
MARVEL	MARVEL	MARVEL	MARVEL	MARVEL	MARVEL
MONOGRAM	MONOGRAM	MONOGRAM	MONOGRAM	MONOGRAM	MONOGRAM
SCOTSMAN	SCOTSMAN	SCOTSMAN	SCOTSMAN	SCOTSMAN	SCOTSMAN
SUB-ZERO	SUB-ZERO	SUB-ZERO	SUB-ZERO	SUB-ZERO	SUB-ZERO
U-LINE	U-LINE	U-LINE	U-LINE	U-LINE	U-LINE
VIKING	VIKING	VIKING	VIKING	VIKING	VIKING

EXHIBIT 12 to EXHIBIT 2

SUBJECT TO CONFIDENTIALITY
ORDER

DATED JULY 29, 2015

EXHIBIT 13 to EXHIBIT 2

Cancel Reasons

1. Changed Mind
2. Duplicate Charge
3. Price Too High
4. Questions Value
5. Coverage Misunderstood
6. Moving/Sell Property
7. Service Related Problem
8. Item(s) Returned
9. Charged Wrong credit card account
10. Commercial Usage
11. Disputed Sale
12. Transfer Coverage
13. Technician Requested Cancel
14. No Longer has Merchandise
16. Credit Collection Request
17. Coverage Credit Cancel
18. Input Error, No \$ Refunded
19. Customer Deceased
20. Wants 1 Year only
21. Wants 2 Year only
22. Revised Plan Type
23. Revised Contract Term
24. Revised # items covered
25. Purchased Competitive Product
26. Selling associate used cancellation clause in sell
27. Exceeded Repair Limit
28. Sears ending relationship with customer/product
29. SSA – Selling Agent Misquoted Price
30. SSA – Unacceptable Service Date
31. SSA – SSA More than Cost of Repair
32. SSA – Product Now Working



EXHIBIT 14 to EXHIBIT 2

SUBJECT TO CONFIDENTIALITY
ORDER

DATED JULY 29, 2015

EXHIBIT 15 to EXHIBIT 2

thank you
for choosing Sears

Sears
Parts & Repair Centers



502200 E-01

NINA GREENE*
5 SAINT CHARLES RD
WAYNE, PA 19087-4755

For additional information, call 1-800-831-9928

Thank you for your trust in Sears. We are glad we were able to provide you with Protection Agreement service for your refrigerator on 06/01/2005.

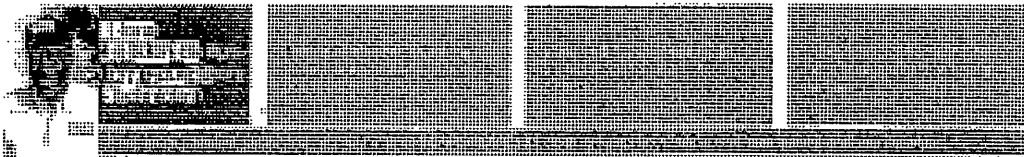
But why do you choose to service your items NO covered by a Protection Agreement? Trust Sears. We repair all major brand items large and small, even if they weren't purchased at Sears — everything from dishwashers to DVDs.

And of course you can also purchase Protection Agreements for your unprotected items* too, and enjoy even more peace of mind.

There's a lot more Sears can offer for you and your home — take a look at some of our suggestions below.

As an additional thank-you, we've included coupons with a variety of great savings for you, our valued customer. Take advantage of them today.

*Some exclusions apply — call 1-800-831-9928 for details.



We service all major brands of vacuum!

Here are signs that your vacuum may need service:

- Bag not filling as frequently
- Weak suction
- Strange noises
- Belt broken or frayed

Just bring it in and our trained technicians can service it. Didn't buy it at Sears? It doesn't matter what brand or model.

Stop by your local Sears Parts & Repair Center today! For location nearest you, call 1-800-4-A-M-I-G-ONE* (say "Sears locations") or click sears.com.

It's Time to Schedule Your Pre-Season Cooling Check. Call Sears Today!

Our Repair Specialist will:

- Inspect and clean condenser coils, condensate lines and pumps
- Lubricate condenser fan motor and air handler blower
- Check filter & vacuum interior furnace for maximum air circulation
- Check refrigerant levels, electrical system and temperature

Sears services all major brands, no matter where you bought them.

Call 1-877-887-7011 to schedule an appointment

Save 10% On Parts

Sears carries parts for all your major brands, no matter where you bought them.

To order call 1-800-831-9928 or visit your local Sears Parts & Repair Center, click sears.com/parts or visit your local Sears Parts & Repair Center.

To receive this discount, please call 1-800-831-9928, provide your Sears Parts & Repair Center location, and provide your phone, model number, and part number. This offer is valid for the purchase of parts only. Not valid for labor. Some restrictions apply. See sears.com/parts for details. *Some restrictions apply. Cash value 100¢. In the event of a claim, coupon might be deducted from your repair. Coupon expires 06/30/05. Valid in U.S.A. only. ©2005 Sears, Roebuck & Co. Sears and Roebuck and Co. are registered trademarks of Sears, Roebuck & Co.

Save 10% Carpet, Upholstery Cleaning

- The Sears Two-Step Deep-Clean Process is recommended by America's largest carpet manufacturer

Call for an appointment: 1-855-427-5995

*This offer is valid for the purchase of carpet cleaning services only. Not valid for other services. Some restrictions apply. See sears.com/cleaning for details. This offer is valid for the purchase of carpet cleaning services only. Not valid for other services. Some restrictions apply. See sears.com/cleaning for details. *Some restrictions apply. Cash value 100¢. In the event of a claim, coupon might be deducted from your repair. Coupon expires 06/30/05. Valid in U.S.A. only. ©2005 Sears, Roebuck & Co. Sears and Roebuck and Co. are registered trademarks of Sears, Roebuck & Co.

Make Worry-Free Protection

Now that you have seen the benefits of your current protection agreement, increase your peace of mind by protecting your other major appliances and home electronics with Sears Protection Agreements, no matter where you bought them. We provide:

- No charge for parts & labor on all covered repairs
- Troubleshooting help over the phone
- Prepaid replacement if we cannot fix your product

We offer a variety of coverage plans to fit your needs.

To Order: Call 1-800-831-9928 and our customer service representative will help find the right plan for you.

Sears services all major brands, no matter where you bought them

For location nearest you, call 1-800-4-A-M-I-G-ONE* (say "Sears locations") or click sears.com

To order call 1-800-831-9928 and our customer service representative will help find the right plan for you.

EXHIBIT 16 to EXHIBIT 2

SUBJECT TO CONFIDENTIALITY
ORDER

DATED JULY 29, 2015

EXHIBIT 3
SUBJECT TO CONFIDENTIALITY
ORDER
DATED JULY 29, 2015

EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

NINA GREENE and GERALD)	
GREENE,)	
Plaintiffs,)	
vs.)	No. 1:15-CV-02546
SEARS PROTECTION COMPANY,)	
SEARS ROEBUCK AND CO. and)	
SEARS HOLDINGS CORPORATION,)	
Defendants.)	

The deposition of KATRINA MEANS, called for examination, taken pursuant to the Federal Rules of Civil Procedure of the United States District Courts pertaining to the taking of depositions, taken before Lynn A. McCauley, CSR No. 84-003268, RPR, a Certified Shorthand Reporter of the State of Illinois, at 115 South LaSalle Street, Suite 2910, Chicago, Illinois, on June 29, 2016, at 9:30 a.m.

Page 2

1 PRESENT:
2 KAUFMAN, COHEN & RESS, P.C., by
3 MS. DEBORAH R. GROSS
4 Two Commerce Square, Suite 3900
5 2001 Market Street
6 Philadelphia, Pennsylvania 19103-7042
7 215-735-8700
8 dgross@kcr-law.com
9 Appeared on behalf of Plaintiffs;
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11 and
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1 Anthony occurred?
 2 A. No.
 3 Q. What is your -- I guess could you briefly
 4 give me your educational background?
 5 A. I have a Bachelor's Degree in Management.
 6 Q. Okay. And from where did you graduate?
 7 A. California State University of Fresno.
 8 Q. Okay. And for how long have you been
 9 employed by Sears?
 10 A. 28 years.
 11 Q. So I'm not going to go back to the
 12 beginning of time --
 13 A. Please.
 14 Q. -- but let's go back -- well, actually
 15 let's start it this way.
 16 What is your current position at
 17 Sears?
 18 A. Director of Service Contracts.
 19 Q. And for how long have you maintained that
 20 position?
 21 A. A little over five years.
 22 Q. So that takes us back to approximately
 23 2011; is that correct?
 24 A. Yes.

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1 Q. Okay. Prior to the position of Director
 2 of Service Contracts, what were you?
 3 A. Product Manager.
 4 Q. And was that in a particular department?
 5 A. Service Contracts.
 6 Q. And for how long were you Product
 7 Manager?
 8 A. I want to say four years.
 9 Q. And when you use the term Service
 10 Contracts, what does that encompass?
 11 A. It includes Protection Agreements. Some
 12 people might refer to them -- while they're not --
 13 but some people might refer to them as an Extended
 14 Warranty.
 15 Q. Have you been involved in the Protection
 16 Agreement Service Contracts area for longer than nine
 17 years?
 18 A. Yes.
 19 Q. So just approximately how long have you
 20 been involved in the Service Contracts area?
 21 A. Probably -- let me think about this
 22 again. I would say probably about 20 years.
 23 Q. When you were Product Manager of Service
 24 Contracts --

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1 A. Yes.
 2 Q. -- where were your offices located?
 3 A. In Hoffman Estates.
 4 Q. And currently as Director of Service
 5 Contracts, are your offices located in Hoffman
 6 Estates?
 7 A. Yes.
 8 Q. Did you move offices within Hoffman
 9 Estates between the two positions when you --
 10 A. Like physically move offices --
 11 Q. Yes.
 12 A. -- within the corporate office?
 13 Q. Correct.
 14 A. Yes.
 15 Q. Okay. And as Product Manager in Service
 16 Contracts, to whom did you report?
 17 A. Gary Mitzner.
 18 Q. And what was his title at that time, if
 19 you recall?
 20 A. Director of Service Contracts.
 21 Q. So he had your position?
 22 A. Yes.
 23 Q. Okay. So now that you were promoted to
 24 Director of Service Contracts is Mr. Mitzner still

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1 there?
 2 A. Yes.
 3 Q. And what is his current position?
 4 A. DVP of Service Contracts.
 5 Q. What does DVP stand for?
 6 A. Divisional Vice President.
 7 Q. So do you report to him currently?
 8 A. Yes.
 9 Q. And is he one of a number of Divisional
 10 Vice Presidents?
 11 A. Within the corporation?
 12 Q. Yes.
 13 A. Yes.
 14 Q. Do you know approximately how many
 15 Divisional Vice Presidents Sears has?
 16 A. No.
 17 Q. Do you know if it's greater than 20?
 18 A. I have no idea.
 19 Q. When you were Product Manager for Service
 20 Contracts, what were your duties and
 21 responsibilities?
 22 A. At the end of that role I had some report
 23 directs.
 24 Q. And when you say you had some report

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<p style="text-align: right;">Page 10</p> <p>1 directs, what do you mean?</p> <p>2 A. I had people reporting in to me.</p> <p>3 Q. Who reported in to you?</p> <p>4 A. The names of the people who reported to</p> <p>5 me at that time was Sheila Dunaway, Jackie Kfoury,</p> <p>6 Ashlie Jobin.</p> <p>7 Q. And do you know generally what --</p> <p>8 A. And Kevin Warrix.</p> <p>9 Q. Sorry. I didn't mean to interrupt you.</p> <p>10 A. That was all.</p> <p>11 Q. Okay. Do you know generally what Kevin</p> <p>12 Warrix was responsible for?</p> <p>13 A. Direct Mail.</p> <p>14 Q. And was that Direct Mail with regard to</p> <p>15 all kinds of Protection Agreements?</p> <p>16 A. Direct Mail -- all kinds in what way?</p> <p>17 Q. All the different -- so are there</p> <p>18 different kinds of Protection Agreements?</p> <p>19 A. Yes. Of products, yes.</p> <p>20 Q. And so what are the different kinds of</p> <p>21 Protection Agreements?</p> <p>22 A. There's -- the names of them.</p> <p>23 There is a Mass Protection</p> <p>24 Agreement, a Repair Protection Agreement, a Value</p> <p>VERITEXT NATIONAL COURT REPORTING COMPANY 215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830</p>	<p style="text-align: right;">Page 12</p> <p>1 those teams.</p> <p>2 Q. And with respect to Jackie Kfoury, what</p> <p>3 was her responsibility?</p> <p>4 A. Product Manager.</p> <p>5 Q. And what does that mean?</p> <p>6 A. She managed the features and the price</p> <p>7 points of two of the products.</p> <p>8 Q. And which products?</p> <p>9 A. The K-Mart Smart Plan and the Purchase</p> <p>10 Protect.</p> <p>11 Q. With respect to Sheila Dunaway, what were</p> <p>12 her responsibilities?</p> <p>13 A. Service Contracts Administration.</p> <p>14 Q. And what does that mean?</p> <p>15 A. She handles all of the State filings and</p> <p>16 registration of the products.</p> <p>17 Q. So who was at this point in time</p> <p>18 responsible for the Price Points for the MPAs?</p> <p>19 A. It was managed by our Pricing Team.</p> <p>20 Q. And did you have any responsibility at</p> <p>21 this point in time over the Pricing Team?</p> <p>22 A. That was prior to 2010?</p> <p>23 Q. Correct.</p> <p>24 A. When I was Product Manager?</p> <p>VERITEXT NATIONAL COURT REPORTING COMPANY 215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830</p>
<p style="text-align: right;">Page 11</p> <p>1 Protection Agreement, a Budget Protection Agreement,</p> <p>2 a Sears Purchase Protect, K-Mart, Service Mart.</p> <p>3 Q. So for the direct --</p> <p>4 A. And that's all of them.</p> <p>5 Q. I'm sorry.</p> <p>6 And so for the Direct Mail aspect</p> <p>7 that Mr. Warrix was responsible for, was that for all</p> <p>8 these various types of Protection Agreements?</p> <p>9 A. For -- yes.</p> <p>10 Q. Okay. What was Ashlie Jobin responsible</p> <p>11 for when she was your direct report?</p> <p>12 A. Product Administration.</p> <p>13 Q. And what is your understanding of what</p> <p>14 that meant?</p> <p>15 A. It is a point of contact with Fulfillment</p> <p>16 and Call Center Administration.</p> <p>17 Q. So what do you mean when you answered</p> <p>18 point of contact with Fulfillment?</p> <p>19 A. She interacts with them if there's</p> <p>20 questions, process changes.</p> <p>21 Q. And who is the them?</p> <p>22 A. Service Fulfillment is our Products</p> <p>23 Repair Services and Home Technicians. Carry and</p> <p>24 Depot. The them is the management of that team,</p> <p>VERITEXT NATIONAL COURT REPORTING COMPANY 215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830</p>	<p style="text-align: right;">Page 13</p> <p>1 Q. Correct.</p> <p>2 A. No.</p> <p>3 Q. Do you know who headed up the Pricing</p> <p>4 Team which was responsible for the MPAs in 2010?</p> <p>5 A. No.</p> <p>6 Q. And with respect to Sheila, Jackie,</p> <p>7 Ashlie, and Kevin, was -- did you hold any kind of</p> <p>8 meetings for your team, your direct reports?</p> <p>9 A. Yeah. One-on-ones and occasional</p> <p>10 meetings.</p> <p>11 Q. Was there any kind of regular reporting</p> <p>12 that each of them did to you?</p> <p>13 A. No.</p> <p>14 Q. When you were the Product Manager and</p> <p>15 reported to Mr. Mitzner, did you participate in any</p> <p>16 kinds of regular meetings with the direct reports to</p> <p>17 Mr. Mitzner?</p> <p>18 MS. HINES: Object to form.</p> <p>19 MS. GROSS: You can still answer.</p> <p>20 MS. HINES: Yeah, you can answer. Sorry.</p> <p>21 BY THE WITNESS:</p> <p>22 A. I'm thinking. I -- with him and his</p> <p>23 direct reports?</p> <p>24 Q. Uh-huh.</p> <p>VERITEXT NATIONAL COURT REPORTING COMPANY 215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830</p>

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1 A. Only at a national meeting.
 2 Q. So take a step back.
 3 Who else were the direct reports to
 4 Mr. Mitzner in the 2010, 2011 timeframe while you
 5 were Product Manager?
 6 A. Call Center General Managers.
 7 Q. And were those for inbound as well as
 8 outbound Call Centers?
 9 A. Yes.
 10 Q. Okay. So that was for -- therefore there
 11 were six different Managers at that point in time or
 12 approximately?
 13 MS. HINES: Object to form.
 14 BY THE WITNESS:
 15 A. I don't remember at that time.
 16 BY MS. GROSS:
 17 Q. Did you have any kind of regularly-
 18 scheduled meetings with Mr. Mitzner at that point in
 19 time?
 20 A. One-on-ones.
 21 Q. And when you say one-on-ones, what do you
 22 mean?
 23 A. We check in once a month I believe.
 24 Q. And in preparation for your one-on-ones

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1 with Mr. Mitzner, did you prepare any form of report?
 2 A. No.
 3 Q. So the one-on-ones was just a general
 4 discussion?
 5 A. A general discussion, and I would write
 6 notes on a note pad.
 7 Q. You previously testified that you
 8 attended a national meeting. What was that?
 9 A. The updates strategy meetings.
 10 Q. And how often do they occur?
 11 A. Two to three times a year.
 12 Q. And during the 2010, 2011 timeframe when
 13 you were Product Manager, where did those meetings
 14 occur?
 15 A. Oh, I wouldn't know.
 16 Q. So how did you participate in those
 17 national meetings?
 18 A. Where did they occur?
 19 Q. Yes.
 20 A. They occur throughout the U.S. I
 21 couldn't tell you specific locations.
 22 Q. Okay. Did you attend them?
 23 A. Yes.
 24 Q. Okay. So you just don't recall where you

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1 attended?
 2 A. Not within Hoffman. I can't tell you
 3 what state I was in for these national meetings in
 4 2010 if that's the question.
 5 Q. Did you participate by telephone?
 6 A. No, the meetings are held nationally, so
 7 they're in different locations, and I don't know
 8 where -- I don't know the locations from six years
 9 ago.
 10 Q. Okay. Do you recall generally what
 11 states you were in?
 12 A. No.
 13 Q. How many people attended -- how many
 14 people generally attend a national meeting?
 15 A. At that time it was the General Manager,
 16 myself, and probably a few Support people, so maybe
 17 12.
 18 Q. And when you say General Manager is
 19 that --
 20 A. The Call Center.
 21 Q. Okay. Call Center?
 22 A. Yeah.
 23 Q. And approximately how long does a
 24 national meeting last?

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1 A. Two-and-a-half days.
 2 Q. And for the national meetings, were
 3 documents or memos distributed prior to the meeting
 4 to discuss -- to prepare you for discussions at the
 5 meeting?
 6 A. No. We did PowerPoint presentations.
 7 Q. Okay. And when you say we do PowerPoint
 8 presentations, do you prepare them for the meeting?
 9 A. Uh-huh.
 10 MS. HINES: You have to say yes.
 11 BY THE WITNESS:
 12 A. Yes. Sorry.
 13 MS. GROSS: Oh. Thank you.
 14 BY MS. GROSS:
 15 Q. And with respect to the national meetings
 16 which occurred in 2011 and 2010 where you were a
 17 Product Manager, do you recall if there were
 18 discussions about MPAs at those meetings?
 19 A. Yes, there would be.
 20 Q. Do you recall anything in general about
 21 the topics of discussion about MPAs at the meetings
 22 in 2010 and 2011?
 23 A. Not specifically.
 24 Q. Do you recall whether coverage -- whether

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1 the extent of coverage by an MPA was discussed?

2 A. Typically that's not covered at these
3 meetings.

4 Q. So what is typically covered at these
5 meetings?

6 A. Dialer conversations, staffing
7 conversations, workforce management, any updates on
8 initiatives.

9 Q. Were there any discussions, if you
10 recall, during the 2010 and 2011 timeframe of Sears'
11 software and computer systems related to MPA
12 agreements?

13 A. Software discussions around MPA
14 agreements? No.

15 Q. Or computer systems?

16 A. No.

17 Q. Was there any discussion at the national
18 meetings concerning the training of the Sears
19 employees at the Call Centers as to how to handle
20 inbound calls concerning MPAs?

21 A. Was there any training discussions?

22 I don't know specifically if there
23 was.

24 Q. Okay. When you became Director of

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1 Q. I'm sorry. I didn't hear you. Some of
2 the General Manager's --

3 A. The Sales and Service Managers.

4 Q. So as Director of Service Contracts,
5 first who is your employer? What is the name of your
6 employer?

7 A. Sears Protection Company.

8 Q. Okay. And was that the same employer
9 when you had the position of Product Manager?

10 A. Yes.

11 Q. Okay. As Director of Service Contracts,
12 who are your direct reports or who have been for the
13 past -- in general? If you don't know the names,
14 just the concepts of the titles.

15 A. Currently?

16 Q. Currently.

17 A. Product Managers, Product Administration,
18 Call Center Applications, Call Center Reporting and
19 Development, Member Experience.

20 I believe that's all.

21 Q. And currently how many Product Managers
22 report to you?

23 A. Three.

24 Q. And who are they currently?

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1 Service Contracts, did you continue attending the
2 national meetings?

3 A. Yes.

4 Q. Okay. And did they continue to occur two
5 to three times a year?

6 A. Yes.

7 Q. Did you run the national meetings when
8 you became the Director of Service Contracts?

9 A. No.

10 Q. Who ran the meetings when you became
11 Director of Service Contracts?

12 A. Gary Mitzner.

13 Q. Okay. Who ran the meetings when you were
14 Product Manager of service contracts?

15 A. Gary Mitzner.

16 Q. Okay. During your tenure as Director of
17 Service Contracts -- I'm just trying to make sure we
18 understand the timeframe, I'm being specific -- when
19 the national meetings occurred, who typically
20 attended?

21 A. The Call Center General Managers, Gary's
22 direct reports -- some of Gary's direct reports I
23 should say, and some of them -- the General Manager's
24 Sales and Service Managers.

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1 A. Jackie Kfoury, Ashlie Jobin, Jason
2 Andrea.

3 Q. And is Jackie Kfoury still responsible
4 for the features and price points of K-Mart and
5 Purchase Protection?

6 A. Yes.

7 Q. Is Ashlie Jobin still currently
8 responsible for the point of contact with Fulfillment
9 and Call Center Administration?

10 A. No.

11 Q. What is she currently?

12 A. Product Manager.

13 Q. So what -- what product is she
14 responsible for?

15 A. Master Protection Agreement, Repair
16 Protection Agreement.

17 Q. And Jason Andrea, what is he currently
18 responsible for?

19 A. He has Service Smart and Budgets.

20 Q. And you say that a Product Administrator
21 currently reports to you?

22 A. Sheila Dunaway.

23 Q. And what is her general --

24 A. Same position.

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1 Q. With respect to the Call Center
 2 Application, how many individuals report to you
 3 with --
 4 A. One.
 5 Q. And who is that individual?
 6 A. Kathy Earl.
 7 Q. And what generally is her responsibility?
 8 A. Developing business requirements for
 9 system enhancements.
 10 Q. So what do you mean by that?
 11 A. If we want to upgrade or enhance the
 12 system, she will take the business terms and put them
 13 in a technical way to hand them off to IT to scope.
 14 Q. And is she responsible for any one
 15 particular system?
 16 A. Ciboodle.
 17 Q. Is that the only system she's responsible
 18 for?
 19 A. She's -- well, she's not responsible for
 20 them. She is putting the business requirements
 21 together for them, and she does that as well for
 22 NPJ and NPS.
 23 Q. And what does NPJ stand for?
 24 A. National Product -- and I don't remember

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1 the last part.
 2 Q. Okay. What does NPS stand for?
 3 A. It's also National Product.
 4 Q. So what is the difference between the two
 5 systems?
 6 A. One is the service side of the business,
 7 and the other is the service contract side.
 8 NPJ is the service contract side.
 9 Q. And when you say NPJ is the service
 10 contract side, what do you mean?
 11 A. It is the system that has all of the
 12 Pricing Customer Service Contract Agreements.
 13 Q. And who uses the NPJ system?
 14 A. The Ciboodle system pulls off of the NPJ
 15 system.
 16 Q. And does the Ciboodle system also pull
 17 off of the NPS system?
 18 A. Yes.
 19 Q. Okay. And does the -- is the NPJ
 20 system -- strike that.
 21 Are either the NPJ system or the NPS
 22 system known -- also known as the Legacy system?
 23 A. Yes.
 24 Q. So are they both?

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1 A. Yes.
 2 Q. And have you heard the term MMI?
 3 A. Yes.
 4 Q. And what's your understanding of what
 5 that is?
 6 A. Brand's list.
 7 Q. And is that any type of software program?
 8 A. It resides in Ciboodle.
 9 Q. And did Kathy have any involvement in
 10 developing MMI do you know?
 11 A. She was in the Business Requirements when
 12 it was developed.
 13 Q. Did you have any involvement in the
 14 development of MMI?
 15 A. I was in the discussions.
 16 Q. Do you recall who else was involved in
 17 the discussions?
 18 A. Not specific people.
 19 Q. General concept areas?
 20 A. Application Manager from -- at the time
 21 it was called Customer Care Network.
 22 Q. Anyone else that you recall?
 23 A. IT.
 24 Q. And when you use the term Customer Care

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1 Network, to what are you referring?
 2 A. Call Centers -- Nonservice Contract Call
 3 Centers.
 4 Q. Prior -- strike that.
 5 You also indicated that currently
 6 Call Center Reporting and Development report to you.
 7 Do you recall that?
 8 A. Correct.
 9 Q. And who is that individual currently?
 10 A. Joe Finley.
 11 Q. And in general what -- what does Call
 12 Center Reporting and Development mean?
 13 A. So it's for Service Contracts only, and
 14 it has the daily and monthly agent level reporting.
 15 Q. And what do you mean by that?
 16 A. It provides reports for the Management
 17 team in the Service Contract Call Centers on the
 18 performances of their agents.
 19 Q. Did you say Management team in the
 20 Service Call Centers and Call Centers?
 21 A. Within the Service Contract Call Centers.
 22 Q. Okay. Thank you.
 23 What -- what types of information
 24 are included in that reporting?

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1 MS. HINES: Object to form. You can answer
2 if you can.
3 THE WITNESS: Pardon?
4 MS. HINES: You can answer if you can.
5 BY THE WITNESS:
6 A. What type of information was the
7 question?
8 BY MS. GROSS:
9 Q. Uh-huh.
10 A. It has number of transactions, dollars,
11 connects.
12 Q. Those would also include number of
13 renewals?
14 A. That would be in the transactions.
15 Q. Okay. Does it include number of
16 cancellations?
17 A. Yes.
18 Q. Does it include number of replacements?
19 A. No.
20 Q. Does it include number of buyouts?
21 A. No.
22 Q. Do you receive copies of these daily and
23 monthly reports prepared by Mr. Finley?
24 A. No.

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1 Q. Do you receive any kind of summary
2 information concerning the reports that Mr. Finley
3 prepares?
4 A. No.
5 Q. How are you informed by Mr. Finley of the
6 daily -- strike that.
7 How are you informed by Mr. Finley
8 of the agent level production?
9 A. I --
10 MS. HINES: Object to form.
11 BY THE WITNESS:
12 A. I don't look at agent level.
13 BY MS. GROSS:
14 Q. Does Mr. Finley -- strike that.
15 What type of reporting to you does
16 Mr. Finley do?
17 MS. HINES: Object to form.
18 BY THE WITNESS:
19 A. He doesn't do any reporting for me.
20 BY MS. GROSS:
21 Q. You previously testified that he was a
22 direct report to you; correct?
23 A. He is, but he doesn't do any reporting
24 for me.

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1 Q. Okay. How -- do you have any one-on-one
2 meetings with Mr. Finley?
3 A. I do have one-on-ones, yes.
4 Q. And how often do they occur?
5 A. Every other week.
6 Q. And are those in-person meetings?
7 A. No, they're by phone.
8 Q. And typically how long do they last?
9 A. 30 minutes.
10 Q. And is there any kind of memorandum
11 reporting that accompanies those one-on-one meetings
12 with Mr. Finley?
13 A. Initiatives list.
14 Q. And what is an initiatives list?
15 A. It says what he's working on and timing
16 and prioritization.
17 Q. Okay. I forgot to ask you these
18 questions.
19 With respect to any of your Product
20 Managers, do you have one-on-ones with them?
21 A. Yes.
22 Q. Are they on an individual basis?
23 A. Yes.
24 Q. And how often do they occur?

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1 A. Every other week.
2 Q. And do they also prepare an initiatives
3 list?
4 A. No.
5 Q. Is there any kind of memorandum or
6 written reporting that any of the products that
7 Managers do in anticipation of the one-on-one
8 meetings?
9 A. They may have notes, but they don't
10 provide anything to me.
11 Q. Okay. Is there any information that you
12 provide to them for the one-on-one meetings with the
13 Product Managers?
14 A. They're verbal discussions.
15 Q. Okay. Do any of your reports provide
16 information on replacements for Protection
17 Agreements?
18 MS. HINES: Object to form.
19 THE WITNESS: I'm sorry. Could you ask that
20 again?
21 BY MS. GROSS:
22 Q. Do any of your direct reports provide
23 information concerning replacements with respect to
24 Protection Agreements?

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1 A. No.
2 Q. Do any of your direct reports provide
3 information to you concerning buyouts of Protection
4 Agreements?
5 A. No.
6 Q. If you know, what area is responsible for
7 maintaining information on replacements arising from
8 Protection Agreements?
9 A. Who is responsible for providing reports?
10 Q. Correct.
11 A. The Underwriting.
12 Q. When you say Underwriting, what do you
13 mean?
14 A. It's the Underwriting team.
15 Q. And what is the Underwriting team?
16 Sears has a lot of technical groups,
17 I'm sure, and we don't have any organizational
18 charts, so bear with me?
19 A. They will do the analysis and reporting
20 around service contracts.
21 Q. And is the Underwriting team housed in
22 any particular division of Sears?
23 A. Under Service Contracts.
24 Q. Okay. And during your tenure as Director

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1 of Service Contracts, who I guess is the point person
2 responsible for the Underwriting team?
3 A. Ryan Smith.
4 Q. And do you happen to know like his
5 official title?
6 A. Director of Underwriting.
7 Q. That's an easy one.
8 Thank you?
9 MS. HINES: Makes sense.
10 BY MS. GROSS:
11 Q. Do you know to whom he reported during
12 the past five years?
13 A. Gary Mitzner.
14 Q. Similarly, with respect to information
15 concerning buyouts of Protection Agreements, do you
16 know what individual or group would be responsible
17 for that information?
18 A. No.
19 Q. Okay. Does the underwriting team do any
20 kind of analysis in reporting of cancellations of
21 Protection Agreements?
22 A. No.
23 Q. Do you have one-on-one meetings with
24 Kathy -- whose last name I can't read in my own

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1 writing --
2 A. Earl.
3 Q. Earl?
4 A. Yes.
5 Q. And how often do you have those meetings?
6 A. Weekly.
7 Q. And are those meetings in person or by
8 phone?
9 A. In person.
10 Q. And does Ms. Earl produce any kind of
11 memorandum in anticipation of these weekly meetings?
12 A. No.
13 Q. Does Ms. Earl produce any memorandum as a
14 result of these one-on-one meetings?
15 A. No.
16 Q. Does -- is there an initiatives list for
17 Ms. Earl?
18 A. No.
19 Q. Okay. And with respect to member
20 experience as a direct report --
21 A. Yes.
22 Q. -- what do you mean by that?
23 A. She looks at NPS scores.
24 Q. And what does that mean?

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1 A. The customer level of satisfaction.
2 Q. And do you have one-on-one meetings with
3 the individual responsible for member experience?
4 A. Yes.
5 Q. And how often do they occur?
6 A. Once a month.
7 Q. And is there any initiative list for the
8 individual responsible for member experience?
9 A. No.
10 Q. Is there any kind of written memorandum
11 produced for or arising from your one-on-one meetings
12 with the individual responsible for member
13 experience?
14 A. No.
15 Q. Okay. And do all of your direct
16 reports -- or strike that.
17 Have all of your direct reports
18 participated in national meetings in the past five
19 years while you were Director of Service Contracts?
20 A. Have all of them? No.
21 Q. How has it changed?
22 MS. HINES: Object to form.
23 MS. GROSS: Okay. Strike that.
24

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1 BY MS. GROSS:
2 Q. What -- who -- which one of your direct
3 reports has participated in the national meetings
4 that have occurred during the past five years as you
5 were Director of Service Contracts?
6 A. So they don't consistently attend them.
7 Q. Okay.
8 A. The only one who typically attends them
9 is the Member Experience, Kelly.
10 And Dannon Setzer.
11 Q. And has Mr. Mitzner participated on a
12 regular basis in the national meetings?
13 A. Yes.
14 Q. Okay. Do any of -- in the past five
15 years when Mr. Mitzner was DVP, what other
16 individuals participated on a regular basis in the
17 national meetings?
18 A. The Service Contract General Managers,
19 myself, and his -- the two team members I gave you
20 Dannon and Kelly. Those are usually the ones.
21 Oh, and Matt Pennies.
22 Q. And what is Matt's position?
23 A. He's Senior Director of Call Center
24 Operations.

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1 Q. And during the past five years has he
2 been located at Hoffman Estates?
3 A. No.
4 Q. Do you know where he has been located?
5 A. Texas.
6 Q. Okay. Do you know if anyone from the
7 Underwriting team has participated in the national
8 meetings?
9 A. On a regular basis?
10 Q. Correct.
11 A. No, they do not.
12 Q. On an as-needed basis?
13 MS. HINES: Object to form.
14 BY THE WITNESS:
15 A. I think they've attended once.
16 BY MS. GROSS:
17 Q. Do you recall why they attended one time?
18 A. They were new.
19 Q. When you say they were new, was it the
20 individual that was new to the position?
21 A. Yes.
22 Q. Thank you.
23 Have you heard of an individual by
24 the name of Mike Nadeu?

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1 A. Yes.
2 Q. And what is his position at Sears?
3 A. Director of Analytics and Support.
4 Q. Have you worked with Mr. Nadeu in the
5 past five years as Director of Service Contracts?
6 A. Yes.
7 Q. And in what capacity have you worked with
8 Mr. Nadeu?
9 A. He supports the business for Data and
10 Analysis.
11 Q. So what does that mean?
12 MS. HINES: Object to form.
13 Answer if you can.
14 BY THE WITNESS:
15 A. If we are needing data to do an analysis
16 or an analysis completed, Mike Nadeu and his team
17 will assist.
18 BY MS. GROSS:
19 Q. Do you have an understanding of the term
20 high-end merchandise with respect to the NPA
21 products?
22 A. Yes.
23 Q. And what is your understanding?
24 A. Of high-end?

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1 Q. Of high-end merchandise with respect to
2 the NPA products?
3 A. It is certain types of merchandise.
4 Q. Do you recall having seen any kind of
5 data or analysis of high-end merchandise for NPAs?
6 A. Data or analysis, no.
7 Q. Do you recall having any -- do you have
8 any responsibility over high-end merchandise with
9 respect to MPAs?
10 A. I'm not sure I understand the question by
11 responsibility.
12 Q. Do -- strike that. I'll start a
13 different way.
14 You indicated that Mr. Finley --
15 that there is an initiatives list that is used by
16 yourself and Mr. Finley.
17 Do you recall that?
18 A. Yes.
19 Q. On what system is that initiatives list
20 housed? Like what computer system?
21 A. It's an Excel spreadsheet.
22 Q. Okay. And do you have a file on your
23 computer that houses, or is entitled initiatives
24 list?

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1 A. From Mr. Finley?
2 Q. Right.
3 A. No.
4 Q. How do you receive updates of the
5 initiatives list?
6 A. He sends me his latest by e-mail.
7 Q. Are there any type of meetings that you
8 attend on a regular basis with Mr. Mitzner?
9 A. Regular meetings that I attend?
10 Q. Uh-huh.
11 A. A staff meeting that's been recently
12 started and -- you say on a regular basis?
13 Q. Uh-huh.
14 A. That's primarily.
15 Q. And when was that regularly started -- I
16 mean strike that.
17 When was that recently started?
18 A. I believe the end of 2015.
19 Q. And how often has that occurred?
20 A. Once a week.
21 Q. And who else participates in that
22 meeting?
23 A. His direct reports, marketing, finance
24 and PMO office -- one person from the PMO office.

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1 Q. And when you say PMO office by what -- to
2 what are you referring?
3 A. Project Management Office.
4 Q. And what is that office?
5 A. It's a person who supports any large
6 initiatives.
7 Q. Large initiatives with respect to service
8 contracts?
9 A. Yes.
10 Q. And has that office existed for the past
11 10 years during your tenure as Director of Service
12 Contracts and Product Manager for Service Contracts?
13 A. Yes.
14 Q. Where -- strike that.
15 Who is the person responsible for
16 the Project Management Office?
17 A. That's in the staff meeting?
18 Mary Nelson.
19 Q. And do you happen to know her title?
20 A. Project Manager.
21 Q. Okay. And during the past five years
22 while you've been Director of Service Contracts, do
23 you recall any of the large initiatives with respect
24 to service contracts that have occurred?

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1 A. In the last -- I'm sorry -- five years?
2 Q. While you've been Director of Service
3 Contracts.
4 A. Large initiatives?
5 We have started a home warranty, a
6 new product called Tech Protect.
7 I believe those are primarily it,
8 the last five that I can remember.
9 Q. So does large initiatives refer to
10 projects or products that have been started?
11 A. Large initiatives are when you're going
12 to have multiple businesses engaged.
13 Oh, and another one was Shop Your
14 Way Points, ability to Shop Your Way Points for
15 purchases.
16 Q. Do you recall if during the past five
17 years the Project Management Office has analyzed any
18 kind of initiatives with respect to Master Protection
19 Agreements?
20 A. Analyze, no.
21 Q. Okay. Has the Project Management Office
22 been involved in Master Protection Agreements in the
23 past five years?
24 MS. HINES: Object to form.

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1 BY THE WITNESS:
2 A. On Shop Your Way.
3 BY MS. GROSS:
4 Q. When you say that an individual from
5 Finance participates in the staff meetings with
6 Mr. Mitzner, to what do you mean with respect to
7 Finance?
8 MS. HINES: Object to form.
9 BY THE WITNESS:
10 A. Yeah, I'm not sure I understand the
11 question.
12 BY MS. GROSS:
13 Q. So what is Finance? Is there a Finance
14 within the Sears Protection Agreements?
15 A. They're somebody who supports Service
16 Contracts.
17 Q. And so what does -- strike that.
18 What type of support does the
19 Finance Department provide for Service Contracts?
20 A. They provide the P&L.
21 Q. Do you see a P&L for Service Contracts?
22 A. Yes.
23 Q. Okay. And have you seen a P&L for
24 Service Contracts during your past five years as

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1 Director of Service Contracts?
 2 A. Yes.
 3 Q. And how often do you see a P&L?
 4 A. Monthly.
 5 Q. Okay. And what type of information is
 6 broken down in the P&L? Is it with respect to the
 7 various forms of Protection Agreements?
 8 A. Referring to products?
 9 Q. I'll try this a different way.
 10 Is the P&L that you see on a monthly
 11 basis broken down by MPA versus RPA versus Budget
 12 versus K-Mart?
 13 A. The -- the only ones that are broken out
 14 on the P&L are the Sears Purchase Protect, the
 15 K-Mart, and the newer Home Warranty and Tech Protect
 16 All others roll up to one number.
 17 Q. During the five years as Director of
 18 Service Contracts, have you ever seen a P&L for MPAs?
 19 A. P&L for MPAs?
 20 No.
 21 Q. Do you participate in any -- strike that.
 22 Within the past five years have you
 23 participated in any meetings with Mr. Nadeu?
 24 A. Yes.

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1 Q. What -- in general what type of meetings
 2 have you participated in with Mr. Nadeu?
 3 A. Staff meetings, just any type of meetings
 4 in which his team is needed.
 5 Q. Do you travel to visit any of the Call
 6 Centers?
 7 A. No.
 8 Q. Do you have any interaction with any
 9 Sears customers concerning Protection Agreements?
 10 A. No.
 11 Q. Do you have any involvement in the
 12 training programs with respect to agents at the Call
 13 Centers?
 14 A. Involvement?
 15 Q. Correct.
 16 A. No.
 17 Q. Do you have any oversight of the training
 18 programs at the Call Centers?
 19 A. No.
 20 Q. Is your department -- strike that.
 21 Is the department in which you are
 22 involved the Service Contracts Department?
 23 A. Yes.
 24 Q. Is that department ever audited by Sears

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1 in any fashion?
 2 A. By Sears? Yes.
 3 Q. And how often is it audited?
 4 A. They're random.
 5 Q. During your five years as Director of
 6 Service Contracts, have you ever seen any reports of
 7 audits of your department?
 8 A. Yes.
 9 Q. Okay. What is the department or company
 10 I guess that's responsible for auditing your
 11 department?
 12 A. Internal Audit.
 13 Q. And is that Internal Audit at Sears
 14 headquarters in Hoffman Estates?
 15 A. Yes.
 16 Q. Do you recall if any of the reports which
 17 you've seen in the past five years from Internal
 18 Audits concerned MPAs?
 19 A. Yes.
 20 Q. Do you recall what in general they
 21 discussed?
 22 A. Yes.
 23 Q. And what was that?
 24 A. It was around the ringing procedure in

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1 the retail store on replacements.
 2 MS. HINES: Did you say ringing?
 3 THE WITNESS: Yeah, POS system. Sorry
 4 California accent.
 5 BY MS. GROSS:
 6 Q. So do you recall approximately when that
 7 report was issued?
 8 A. Three years ago.
 9 Q. And do you recall what in general the
 10 report found?
 11 A. Yes.
 12 Q. And what was that?
 13 A. We have a gap in the -- on the
 14 authorization number that could lead to potential
 15 fraud.
 16 Q. So what do you mean by a gap in the
 17 authorization number?
 18 A. The -- this is proprietary. I wouldn't
 19 want it open. The authorization number that is used
 20 by retail when they ring it only authorizes only on
 21 the first four numbers and not on the whole number
 22 allowing the authorization number to either be made
 23 up or reused.
 24 Q. During the -- during your tenure as

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1 Director of Service Contracts, did you ever see any
2 information concerning -- strike that. Let me do a
3 prior question.

4 Have you heard of the Great Indoors
5 stores?

6 A. Yes.

7 Q. And what are they?

8 A. They were stores that Sears had open to
9 offer home appliances and home goods.

10 Q. And are you aware that the stores closed?

11 A. Yes.

12 Q. Do you recall when they closed?

13 A. Six years ago.

14 Q. So did you have any responsibility with
15 respect to Protection Agreements issued with respect
16 to products sold at the Great Indoors stores?

17 A. Okay. I got lost on the question. Did I
18 what?

19 MS. GROSS: Can you read back the question?

20 (WHEREUPON, the record was
21 read by the reporter.)

22 BY THE WITNESS:

23 A. The stores closed before I became
24 Director of Service Contracts.

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1 BY MS. GROSS:

2 Q. But when you were Product Manager of
3 Service Contracts, did you have any involvement with
4 respect to Protection Agreements I guess sold at
5 the --

6 A. They were being sold.

7 Q. Let me finish.

8 (Continuing.) -- Protection
9 Agreements issued with respect to products sold at
10 the Great Indoors stores?

11 A. They were being sold at the time I was a
12 Product Manager, but I don't remember anything I
13 worked on that was in regards to that.

14 Q. So what -- I don't actually think I asked
15 this question for some reason.

16 What have been your job
17 responsibilities as Director of Service Contracts for
18 the past five years?

19 A. The -- so I oversee the team of 10 that
20 has product features, pricing, call center
21 applications, enhancement agent reporting, member
22 experience, so I set the strategy and initiatives.

23 Q. When you say you set the strategy
24 initiatives, what do you mean?

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1 A. I determine what we are going to work on
2 and develop for the business around product pricing
3 and the other functions of my team.

4 Q. And how do you go about setting these
5 strategy initiatives?

6 A. Align to the corporate, and you find --
7 as time goes you find there are new opportunities or
8 things that need to be adjusted or changed with the
9 market.

10 Q. How often do you set these strategy
11 initiatives?

12 A. At the end of the year for the following
13 year.

14 Q. And how do you inform your direct reports
15 of these strategy initiatives?

16 A. Through one-on-ones.

17 Q. Do the strategy initiatives ever take any
18 kind of written form?

19 A. Yes.

20 Q. And what is that written form that they
21 take?

22 A. An Excel spreadsheet.

23 Q. And do you create a new Excel spreadsheet
24 each time you create a new strategy initiative?

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1 A. Add it to it.

2 Q. Okay.

3 A. So a new one each year. It's a new sheet
4 each year, and then things may change throughout the
5 year.

6 Q. And do you keep track of the progress
7 made towards the strategy initiatives each year?

8 A. Yes.

9 Q. And how do you do that?

10 A. One-on-ones and an occasional team
11 meeting.

12 Q. And do you record in some written fashion
13 the progress made towards the initiatives?

14 A. On the Excel spreadsheet.

15 Q. And where is this Excel spreadsheet
16 housed?

17 A. For the current year it's kept on a
18 shared drive.

19 Q. And when you say kept on a shared drive,
20 what do you mean?

21 A. It's a drive that multiple people can get
22 to that is not private.

23 Q. So can all your direct reports get to it?

24 A. Yes.

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<p style="text-align: right;">Page 50</p> <p>1 Q. Who else can get to it?</p> <p>2 A. Multiple people if they know where to go.</p> <p>3 Q. Does -- can Mr. Mitzner -- strike that.</p> <p>4 Does Mr. Mitzner have access to your</p> <p>5 strategy initiatives?</p> <p>6 A. He has access to the shared drive.</p> <p>7 Q. Uh-huh.</p> <p>8 A. He doesn't know where the list is nor</p> <p>9 does he see the list.</p> <p>10 Q. Does your strategy initiatives include</p> <p>11 revenue goals?</p> <p>12 A. No.</p> <p>13 Q. What -- what type of information is</p> <p>14 included in your strategy initiatives?</p> <p>15 A. The initiative who owns it, timing,</p> <p>16 resources needed, and if it's on track or not.</p> <p>17 Q. And typically how many initiatives are</p> <p>18 included in your strategy initiative?</p> <p>19 A. Probably 40.</p> <p>20 Q. And do you recall whether any of the</p> <p>21 initiatives have discussed NPAs in the past five</p> <p>22 years?</p> <p>23 A. Yes.</p> <p>24 Q. And what are some examples of initiatives</p> <p>VERITEXT NATIONAL COURT REPORTING COMPANY 215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830</p>	<p style="text-align: right;">Page 52</p> <p>1 coverage of those products?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. In an NPA?</p> <p>4 A. Yes, yes. When you're doing a</p> <p>5 competitive -- like if you're doing a competitive</p> <p>6 review of the contract, it includes what products are</p> <p>7 sold.</p> <p>8 Q. Have any of your initiatives included</p> <p>9 high-end merchandise products coverage?</p> <p>10 A. Not specifically high-end, no.</p> <p>11 Q. Okay. Have they included them generally?</p> <p>12 MS. HINES: Object to form.</p> <p>13 MS. GROSS: Okay. I'll withdraw the</p> <p>14 question.</p> <p>15 BY MS. GROSS:</p> <p>16 Q. What do you mean by not specifically.</p> <p>17 A. There isn't a specific initiative that</p> <p>18 looks at high-end and contracts on high-end.</p> <p>19 Q. Okay. Got it. Thank you.</p> <p>20 Have there been any initiatives</p> <p>21 which look at the language included in the NPA</p> <p>22 Agreement?</p> <p>23 A. Yes.</p> <p>24 Q. And what do you recall about those</p> <p>VERITEXT NATIONAL COURT REPORTING COMPANY 215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830</p>
<p style="text-align: right;">Page 51</p> <p>1 that you have set for NPAs within the past five</p> <p>2 years?</p> <p>3 A. Testing out new direct mail creatives,</p> <p>4 Shop Your Way. I'm trying to think of what else.</p> <p>5 Competitive feature review,</p> <p>6 installment billing. That's some of them.</p> <p>7 Q. Have any of your initiatives in the past</p> <p>8 five years discussed coverage of products for Master</p> <p>9 Protection Agreements?</p> <p>10 A. Could you define products for me? Are</p> <p>11 you talking about the Service Contract products or</p> <p>12 are you talking about products like in merchandise?</p> <p>13 Q. With -- well, either quite honestly with</p> <p>14 respect to the Master Protection Agreements.</p> <p>15 What do Master Protection Agreements</p> <p>16 cover?</p> <p>17 A. Home appliances, home electronics, lawn</p> <p>18 and garden, and tools.</p> <p>19 Q. The products?</p> <p>20 A. Yes. The Master Protection Agreement is</p> <p>21 home appliances and electronics and tools.</p> <p>22 Q. And their products; correct?</p> <p>23 A. Yes.</p> <p>24 Q. So have any of your initiatives addressed</p> <p>VERITEXT NATIONAL COURT REPORTING COMPANY 215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830</p>	<p style="text-align: right;">Page 53</p> <p>1 initiatives?</p> <p>2 A. We looked at our competitors last year</p> <p>3 and -- or other -- and looked at the feature sets and</p> <p>4 made decisions on changes.</p> <p>5 Q. What involvement do you have in</p> <p>6 formulating the language in a Master Protection</p> <p>7 Agreement?</p> <p>8 A. I will review them, part of the decision</p> <p>9 making of the changes; and Sheila, who works for me,</p> <p>10 works with our Legal Department on the wording of</p> <p>11 them.</p> <p>12 Q. And when you reference the term Legal</p> <p>13 Department, is that Legal Department for Service</p> <p>14 Contracts?</p> <p>15 A. They're Legal Department for Home</p> <p>16 Services that includes Service Contracts.</p> <p>17 Q. Does anybody from the Legal Department</p> <p>18 for Home Services participate in your staff meetings</p> <p>19 with Mr. Mitzner?</p> <p>20 A. No.</p> <p>21 Q. Okay. In one of your prior answers you</p> <p>22 made a reference to a line to corporate.</p> <p>23 Do you recall that when you were</p> <p>24 describing your responsibilities?</p> <p>VERITEXT NATIONAL COURT REPORTING COMPANY 215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830</p>

1 A. A strategy aligning to corporate.

2 Q. A strategy aligning to corporate. Sorry.
3 Thank you.

4 And what did you mean by that?

5 A. So the company is -- strategy is
6 integrated retailer, so you make sure that the --
7 that includes digital.

8 So you make sure that -- you're
9 trying to align to make sure you have the same
10 digital presence or digital capabilities that your
11 corporate would.

12 Q. Are you familiar with how NPAs are
13 purchased by customers?

14 A. Yes.

15 Q. And what is your understanding of how
16 NPAs are purchased by customers?

17 A. They are purchased with the product at
18 retail point of sale, they are purchased from one
19 of -- they can be purchased online with the product,
20 and they can be purchased in the -- from the Call
21 Centers in the aftermarket Contracts, and they can be
22 purchased from a technician in the home.

23 Q. And with respect to purchasing with a
24 product at a retail point of sale, can those NPAs

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1 only be purchased for the product purchased at the
2 point of sale?

3 A. At retail, yes.

4 Q. There -- an NPA agreement cannot be
5 purchased for other products outside of the retail
6 purchase; correct, at the point of sale purchase?

7 A. They cannot purchase contracts on other
8 items other than the item they're buying.

9 Q. Right. Thank you.

10 With respect to -- strike that.

11 You also indicated an NPA can be
12 purchased online with a product.

13 Is that a newer feature?

14 A. No.

15 Q. How long has that been in existence?

16 A. Since we went online, and I don't know
17 when that was.

18 Q. And when an NPA is purchased online with
19 a product, can the NPA also cover products not
20 purchased online?

21 A. So when the customer is going on
22 Sears.com and buying a product, they can only buy the
23 PA that is in relationship to that product.

24 Q. With respect to NPAs purchased from Call

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1 Centers in the aftermarket, can a customer purchase
2 an NPA for all products in their home?

3 MS. HINES: Object to form.

4 MS. GROSS: Strike that. I'll try a
5 different way.

6 BY MS. GROSS:

7 Q. With respect to NPAs purchased from Call
8 Centers in the aftermarket, what products can be
9 covered by an NPA?

10 A. Purchase from the Call Centers can be
11 covered for -- by an NPA would be the home
12 appliances, home electronics, tools, and meeting
13 certain eligibility criteria.

14 Q. And when an NPA is purchased by a
15 customer from a Call Center, is that typically a
16 telephone conversation?

17 A. It's telephone and direct mail.

18 Q. Okay. And when you say direct mail, what
19 do you mean?

20 A. U.S. Postal Service, a direct mail offer.

21 Q. So a customer would be responding to a
22 direct mail offer which contains a phone number to
23 call with respect to an NPA agreement?

24 A. They can phone, or they can tear it off

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1 and send it back.

2 Q. And if they send it back, would then a
3 Call Center representative call a customer and
4 communicate with them concerning an NPA agreement?

5 A. If the customer just tore off and sent in
6 their payment information, no.

7 Q. Not with respect to payment information
8 but with respect to finding out information about an
9 NPA, about purchasing an NPA?

10 MS. HINES: Object to form.

11 BY THE WITNESS:

12 A. Yeah, I'm not understanding the question.
13 Sorry.

14 MS. GROSS: Okay. Can you read back a
15 question, like three before?

16 (WHEREUPON, the record was
17 read by the reporter.)

18 BY MS. GROSS:

19 Q. With respect to a direct mail
20 solicitation for an NPA agreement, after a customer
21 either tears off -- after a customer tears off the
22 piece of paper and responds, would a Call Center
23 representative communicate with that customer
24 concerning the purchase of an NPA agreement by

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1 telephone?

2 A. From that response, no.

3 Q. How does it -- how does that
4 communication occur?

5 A. The customer sends in the information to
6 purchase, we would process that information, which
7 includes the payment information, and then we would
8 send the customer the terms and conditions contract.

9 Q. So there's a possibility that no
10 communication --

11 A. Verbal.

12 Q. No verbal communication has occurred
13 between the Call Center and the customer when -- to
14 discuss the purchase of an NPA agreement?

15 A. For a direct marketing response, that's
16 correct.

17 Q. With respect to that situation where it's
18 a direct mail response, how does Sears learn of the
19 products that the customer wants included in the NPA?

20 A. They -- it's in the customer's file
21 either from a retail purchase or from when they've
22 had service on the product.

23 Q. Would there also be a situation where
24 there is a direct mail response without any verbal

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1 communications with respect to a renewal of an NPA
2 without a retail purchase?

3 MS. HINES: Object to form.

4 Answer if you can.

5 BY THE WITNESS:

6 A. A direct mail response to a renewal from
7 a retail purchase.

8 MS. GROSS: No. Direct -- all right. Let's
9 start again.

10 THE WITNESS: Okay.

11 BY MS. GROSS:

12 Q. Are there NPAs that are renewed by direct
13 mail which cover products that have not been
14 purchased at the Sears store or Sears online?

15 A. Is there a direct mail response -- I'm
16 sorry could you...

17 (WHEREUPON, the record was
18 read by the reporter.)

19 BY THE WITNESS:

20 A. Yes, they could have come through the
21 file service.

22 BY MS. GROSS:

23 Q. When you say file service, what do you
24 mean?

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1 A. They could have added the item when they
2 had the service call.

3 Q. Can NPAs be issued for products that are
4 in a customer's home which may not have been
5 purchased at the Sears store or have not been
6 serviced by a technician?

7 A. In general can they cover those --

8 Q. Uh-huh.

9 A. -- yes.

10 Q. Is there some way for you to determine
11 whether there are Sears NPAs which have been issued
12 to cover products not purchased in the Sears store or
13 Sears online or not serviced by a Sears technician?

14 A. Is there a way for us to find if we sold
15 NPAs on items that were not Sears sold or serviced?

16 Q. Correct.

17 A. I would say yes with some matching logic.

18 Q. So can you explain that?

19 A. You would have to build a query that is
20 looking for certain criteria to do that.

21 Q. Do you know if that analysis has ever
22 been performed by, you know, anyone in your direct
23 report?

24 A. No, not that I know of.

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1 Q. Do you know if that analysis has been --
2 strike that.

3 Do you know if that query has been
4 performed by anyone in the underwriting team?

5 A. Nope, not that I know of.

6 MS. GROSS: Okay. If you don't mind, I would
7 like to take a break to go to the bathroom.

8 MS. HINES: Sure.

9 (WHEREUPON, a recess was
10 had.)

11 BY MS. GROSS:

12 Q. During your tenure as Director of Service
13 Contracts, have you analyzed sales of NPAs from point
14 of sale versus aftermarket?

15 A. Yes.

16 Q. And how have you done that analysis, or
17 how has that analysis been performed?

18 A. Through queries, data queries.

19 Q. And why have you looked at such
20 information?

21 A. You're looking for -- that determine the
22 margin on -- for pricing.

23 Q. And how often do you look at that kind of
24 information?

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1 A. A couple times a year maybe.
 2 Q. What information do you look at?
 3 A. Cost per service call, frequency of
 4 service information, and dollars sold.
 5 Q. And where do you obtain the information
 6 that you look at?
 7 A. The warehouse.
 8 Q. Okay. I mean you say warehouse. To what
 9 are you referring?
 10 A. Corporate warehouse also known as LCI.
 11 Q. So what is corporate warehouse LCI?
 12 A. It holds customer information including
 13 customer household; name; address; phone number, if
 14 it's available; products; Shop Your Way; Service
 15 Contracts; service; just different variables.
 16 Q. And does it also include price
 17 information?
 18 MS. HINES: Object to form.
 19 BY THE WITNESS:
 20 A. It includes price sold.
 21 BY MS. GROSS:
 22 Q. Price sold. Okay.
 23 And is that data warehouse different
 24 from the NPS and NPJ system?

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1 A. NPS and NPJ feed to the data warehouse.
 2 Q. Got it. Thank you.
 3 Does Ciboodle feed to the data
 4 warehouse.
 5 A. Ciboodle feeds off of NPJ and NPS,
 6 therefore, the data would go into the warehouse.
 7 Q. Has any similar analysis been performed
 8 for Master Protection Agreements sold for high-end
 9 merchandise?
 10 A. No.
 11 Q. When an analysis is performed to
 12 determine the margin for pricing, what format does
 13 that occur in?
 14 A. Excel.
 15 Q. Does it have a name?
 16 A. When we're doing the analysis?
 17 Q. Uh-huh.
 18 A. No.
 19 Q. And who participates in that analysis?
 20 A. Product Managers and someone from
 21 underwriting.
 22 Q. Is it an Excel -- does it take the form
 23 of an Excel spreadsheet that is revised a couple
 24 times a year?

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1 A. It depends upon what your analysis --
 2 right. You're running a query and then you're taking
 3 the information from the query and you're putting it
 4 into an Excel spreadsheet so that you can do your
 5 analysis and it varies based upon what you're trying
 6 to look at.
 7 Q. And as a result of the analysis that's
 8 performed, are prices for NPAs changed on any kind of
 9 frequency?
 10 A. Is there a set frequency for changing
 11 prices? No.
 12 Q. How is a determination made to change
 13 prices for NPAs?
 14 MS. HINES: Object to form.
 15 BY THE WITNESS:
 16 A. We will -- you're looking at customer
 17 acceptance levels, response rates, those types of
 18 things; and if you see something that has changed,
 19 you may go back and look to see what has caused the
 20 change.
 21 BY MS. GROSS:
 22 Q. And that's a determinative factor for
 23 changes in pricing for NPAs?
 24 A. You may have new products that have come

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1 in it, price points of products may have changed. It
 2 will happen more frequently in consumer electronics
 3 where the technology is changing.
 4 Q. Do you -- who has the final authorization
 5 to approve a price change?
 6 A. Myself and Gary.
 7 Q. How is a price change implemented?
 8 A. Through NPJ and on the retail side price
 9 management.
 10 Q. So when you say it's implemented through
 11 NPJ, how is that information of the price change
 12 communicated into the NPJ system?
 13 A. There's someone on my team who types in
 14 the prices.
 15 Q. Okay. Who is that person or who was that
 16 person during --
 17 A. Ernestine Miller.
 18 Q. And what is Ernestine Miller's -- or what
 19 has Ernestine Miller's job responsibilities been
 20 within the last five years?
 21 A. Data entry for pricing. She assists a
 22 couple of other businesses, too, but I don't know
 23 everything that she is...
 24 Q. And when you say a couple other

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1 businesses, what do you mean?
 2 A. Our in-home side of our business, she'll
 3 also do some data entry for them.
 4 Q. Is she a direct report to you?
 5 A. No, she reports to somebody on my team.
 6 Q. And which person is that?
 7 A. Currently Ashlie Jobin.
 8 Q. Got it. Thank you.
 9 When information about price change
 10 is implemented through NPJ, does that also affect the
 11 calculation with respect to refunds and cancellations
 12 of NPAs?
 13 A. Historically on what's already been sold?
 14 No.
 15 Q. With respect to calculations of refunds,
 16 how do you obtain information about that?
 17 Sorry. With respect to calculation
 18 of refunds for NPAs, how do you obtain information on
 19 that?
 20 A. How are they calculated or?
 21 Q. First how -- do you obtain information on
 22 the calculation of refunds for NPAs?
 23 MS. HINES: Object to form.
 24 MS. GROSS: As part of your job

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1 responsibilities.
 2 BY THE WITNESS:
 3 A. Yeah, I'm not sure I understand.
 4 Do I receive --
 5 BY MS. GROSS:
 6 Q. Do you ever look at information on the
 7 amount, dollar amounts of refunds for NPAs?
 8 A. I see total dollar amounts canceled.
 9 Q. And do you see information about total
 10 dollar amounts canceled on any type of regular basis?
 11 A. Monthly.
 12 Q. And when you say you see total dollar
 13 amounts, is it for each, I'll say, product group, so
 14 it's for NPAs versus RPAs, versus --
 15 A. No.
 16 Q. So what type of information do you see on
 17 a monthly basis?
 18 A. I see a cancellation to net sales by the
 19 channel it was sold, meaning whether it was a retail
 20 contract or an aftermarket contract, and I see -- the
 21 Service Smart is broken out differently just like it
 22 is on the P&Ls, and the rest of them that are rolled
 23 up.
 24 Q. And what area or department is

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1 responsible for producing this monthly analysis that
 2 you see with respect to dollar amounts canceled?
 3 A. It's on my team.
 4 Q. And which individual?
 5 A. It is Demi Richardson, which I think I
 6 may have left her off earlier.
 7 Q. And what is her responsibility?
 8 A. Her title is Marketing and Customer
 9 Segment Manager, but she's primary a Channel Manager.
 10 Q. So let's take this one at a time.
 11 What is a Channel Manager?
 12 A. Sorry.
 13 Q. That's okay. No, no. It's helpful to
 14 all of us honestly.
 15 So what is the Channel Manager?
 16 A. Channel Manager works on -- how do you
 17 explain this? They are the point of contact for
 18 initiatives that would impact or go into the Service
 19 Contract Call Centers.
 20 So she coordinates all of the
 21 communication of whose got what going on at what
 22 point.
 23 Q. And what is a Marketing and Customer
 24 Segment Manager, or was that included in your prior

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1 answer?
 2 A. That's her official title.
 3 Q. Okay.
 4 A. So -- and the other part of her role is
 5 looking at the customer -- how we're reaching out to
 6 customers to contact them around purchasing of a
 7 contract.
 8 Is it direct -- are we going to
 9 direct mail, or are we going to telemarketing?
 10 Q. Do you have one-on-ones with
 11 Ms. Richardson?
 12 A. Yes.
 13 Q. How often?
 14 A. Weekly.
 15 Q. In person or by telephone?
 16 A. In person.
 17 Q. And does she prepare any kind of regular
 18 written report for you?
 19 A. She works off of that initiatives list
 20 that we talked about earlier.
 21 Q. So the initiatives list that is used for
 22 Mr. Finley is also used for Ms. Richardson?
 23 A. Yes.
 24 Q. Does anyone else work off of the

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<p style="text-align: right;">Page 70</p> <p>1 initiatives list?</p> <p>2 A. The majority of the team has access to</p> <p>3 that list and will list their items on there.</p> <p>4 Q. Does Mr. Setzer have access to that</p> <p>5 initiatives list?</p> <p>6 A. Yes.</p> <p>7 Q. Has he listed items on that list in the</p> <p>8 past five years?</p> <p>9 A. Yes.</p> <p>10 Q. Do you recall if that initiatives list</p> <p>11 has included information concerning MMI?</p> <p>12 A. No, it does not.</p> <p>13 Q. You indicated that you see monthly a</p> <p>14 report on the total dollar amounts canceled.</p> <p>15 Do you recall that?</p> <p>16 A. Uh-huh.</p> <p>17 Q. Does that information also include why</p> <p>18 NPAs are canceled?</p> <p>19 A. No.</p> <p>20 Q. Do you receive any information -- strike</p> <p>21 that.</p> <p>22 Have you received any information</p> <p>23 during your tenure as Director of Service Contracts</p> <p>24 on why NPAs are canceled?</p> <p>VERITEXT NATIONAL COURT REPORTING COMPANY 215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830</p>	<p style="text-align: right;">Page 72</p> <p>1 of determining, you know, their reasons?</p> <p>2 MS. HINES: Object to form.</p> <p>3 BY THE WITNESS:</p> <p>4 A. Not that I'm aware.</p> <p>5 BY MS. GROSS:</p> <p>6 Q. What is your understanding as to why</p> <p>7 there are a list of cancel reasons which resides in</p> <p>8 Ciboodle?</p> <p>9 MS. HINES: Object to form.</p> <p>10 BY THE WITNESS:</p> <p>11 A. Why is there a list?</p> <p>12 BY MS. GROSS:</p> <p>13 Q. Correct.</p> <p>14 A. I'm sure so it can be bucketed.</p> <p>15 Q. Do you have any reason as to who looks at</p> <p>16 the reasons attributed to cancellations of NPAs?</p> <p>17 MS. HINES: Object to form.</p> <p>18 BY THE WITNESS:</p> <p>19 A. I'm not aware who looks at it.</p> <p>20 BY MS. GROSS:</p> <p>21 Q. Okay. Is there any other financial</p> <p>22 information concerning NPAs that you review on a</p> <p>23 regular basis?</p> <p>24 MS. HINES: Object to form.</p> <p>VERITEXT NATIONAL COURT REPORTING COMPANY 215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830</p>
<p style="text-align: right;">Page 71</p> <p>1 MS. HINES: Object to form.</p> <p>2 BY THE WITNESS:</p> <p>3 A. Have I ever seen anything?</p> <p>4 BY MS. GROSS:</p> <p>5 Q. Uh-huh.</p> <p>6 A. Not that I recall.</p> <p>7 Q. Have you ever seen anything concerning</p> <p>8 the reasons -- the various reasons why NPAs are</p> <p>9 canceled?</p> <p>10 A. I don't remember seeing anything.</p> <p>11 Q. Are you aware that there is a list of</p> <p>12 reasons that Sears uses to attribute -- which are</p> <p>13 attributed -- strike that.</p> <p>14 Are you aware that there is a list</p> <p>15 of reasons used by Sears attributed to various</p> <p>16 cancellations of NPAs?</p> <p>17 A. Yes.</p> <p>18 Q. Okay.</p> <p>19 A. I'm aware of the list.</p> <p>20 Q. Okay. Do you know where that list</p> <p>21 resides?</p> <p>22 A. It's an option in Ciboodle.</p> <p>23 Q. And have you or any of your direct</p> <p>24 reports analyzed cancellations of NPAs for purposes</p> <p>VERITEXT NATIONAL COURT REPORTING COMPANY 215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830</p>	<p style="text-align: right;">Page 73</p> <p>1 BY THE WITNESS:</p> <p>2 A. Financial information? No.</p> <p>3 BY MS. GROSS:</p> <p>4 Q. Well, you had previously testified that</p> <p>5 you received monthly total dollar amounts canceled</p> <p>6 for NPAs. You also testified that you received</p> <p>7 monthly a P&L report for NPAs.</p> <p>8 So is there any other kind of</p> <p>9 financial analysis?</p> <p>10 A. On NPAs?</p> <p>11 Q. Correct.</p> <p>12 A. No.</p> <p>13 Q. Do you receive any kind of information on</p> <p>14 dollar amounts of products replaced which had been</p> <p>15 covered by NPAs?</p> <p>16 A. Yes.</p> <p>17 Q. And what format do you receive that</p> <p>18 information?</p> <p>19 A. In Excel.</p> <p>20 Q. And how often do you receive that</p> <p>21 information?</p> <p>22 A. Weekly.</p> <p>23 Q. And does that type of information have a</p> <p>24 name?</p> <p>VERITEXT NATIONAL COURT REPORTING COMPANY 215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830</p>

1 A. It's just replacement reporting.

2 Q. What information other than the dollar
3 amounts in products replaced is included in the
4 replacement report?

5 A. It breaks out monthly, weekly, reasons
6 for replacement, quantity, dollar that was
7 authorized. It also breaks out the Service Smart and
8 the New Home Warranty separate.

9 Q. Does it also break out the -- not only
10 the dollar information authorized but the dollar
11 information of replacements fulfilled?

12 A. No.

13 Q. How do you learn information about
14 whether the dollar amount authorized for replacement
15 products compares to the dollar amount fulfilled for
16 replacement products?

17 MS. HINES: Object to form.

18 MS. GROSS: Strike that.

19 BY MS. GROSS:

20 Q. Are you aware that -- strike that.

21 When you say dollar amount
22 authorized, what do you mean?

23 A. The amount that has been authorized to
24 replace the product.

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1 Q. Okay.

2 A. For the consumer.

3 Q. Are you aware that not all replacement
4 authorizations are fulfilled or completed by the
5 customer?

6 MS. HINES: Object to form.

7 THE WITNESS: Yeah, I'm not following the
8 question either.

9 BY MS. GROSS:

10 Q. Is there a difference between a dollar
11 amount authorized for a replacement product and a
12 dollar amount fulfilled with respect to the actual
13 purchase of that product?

14 A. Yes, the customer can upgrade and spend
15 more or less than what was authorized.

16 Q. Or the customer could not take the
17 authorization?

18 A. Yeah, that -- probably.

19 Q. So is there any kind of analysis that you
20 see that's performed as to whether the dollar amount
21 authorized differs from the, you know, dollar amount
22 fulfilled?

23 A. Yes.

24 Q. And what -- how do you -- what

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1 information do you see?

2 A. I've seen the analysis I think twice.

3 Q. And what type of report does that take?

4 A. It's just an Excel spreadsheet, but you
5 have timing issues in there.

6 Q. Who produces that report?

7 A. It's been done I think twice by two
8 different people. I don't know who did them.

9 Q. Is that, if you know, the responsibility
10 of someone in Finance?

11 A. No, it wasn't in Finance.

12 Q. Do you know what area or department that
13 was from?

14 A. I think it was somebody on the Analytics
15 Team, and it's looking at a point in time so, you
16 know, you've been authorized let's say in Week 17,
17 and if you're looking at those spends in Week 18, you
18 have -- there's this timing of when you're actually
19 shopping to when it was authorized.

20 Q. Okay. Have you seen any kind of
21 financial analysis of renewals of NPAs?

22 A. Yes.

23 Q. And what form -- strike that.

24 During your tenure as Director of

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1 Service Contracts, what form has that analysis taken?

2 A. Excel spreadsheets.

3 Q. And how often is that information
4 prepared? If you know.

5 A. I looked at it about once a quarter.

6 Q. And does that Excel spreadsheet have a
7 name?

8 A. Response Reporting Tool.

9 Q. And what other information is -- strike
10 that.

11 What information is contained in the
12 Response Reporting Tool?

13 A. Number of events that were generated to
14 reach out to a customer, number of responders,
15 dollars sold, net and gross duration of the
16 contract -- average duration of the contract, average
17 number of items purchased.

18 Q. And is that broken out by different types
19 of Protection Agreements?

20 A. The type that are purchased is broken
21 out, yes.

22 Q. So that information would be provided
23 for -- strike that.

24 That information has been provided

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1 for NPAs?

2 A. Of those purchased, yes.

3 Q. Right.

4 Do you know what department or
5 individual prepares that information?

6 A. It's an automated report.

7 Q. So can you explain to me what you mean by
8 it's an automated report?

9 A. It's an SQL query that's already been
10 built, Sequel, and it goes off the warehouse and you
11 go in and you just refresh the data on a pivot table.

12 Q. So what do you mean when you say refresh
13 data on a pivot table?

14 A. It's changing the -- bringing in the most
15 recent data from the warehouse, so it's just going
16 out and retrieving the data and bringing it back in
17 and summarizing it into this Excel.

18 Q. What other automated reports are
19 available to you from the data warehouse?

20 A. Automated reports from the data
21 warehouse? Give me a second to think about this.

22 Q. Take your time.

23 A. I have to kind of walk through my day.

24 What we call a -- we call it a PA

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1 Unit Pen Report, and that provides retail
2 information, merchandise sold, PA sold, average
3 dollar value of the PA sold, average dollar of the
4 merchandise sold.

5 Q. Any other kinds of automated reports that
6 are available to you?

7 A. Those are the primary ones that I use
8 that I can think of offhand.

9 Q. Okay. Is there any kind of automated
10 report that you review for aftermarket purchases of
11 NPS?

12 A. That Response Reporting Tool.

13 Q. Do you know what Sears' document
14 retention policy is?

15 A. No.

16 Q. Just to be thorough -- I want to make
17 sure I haven't forgotten anything -- I want to show
18 you what's been previously marked as Plaintiffs'
19 Exhibit 5, which is an organizational chart with your
20 name at the top which says -- do you have an
21 understanding as to what this organizational chart
22 reflects?

23 A. It's my organization.

24 Q. Okay. Do you have a -- do you have an

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1 approximate time period?

2 A. That this was my organization?

3 Q. Correct.

4 A. It looks like it's about four months old.

5 Q. Four months from today?

6 A. Yeah.

7 Q. Do you keep organizational charts such as
8 this?

9 A. For my team?

10 Q. Correct.

11 A. I think I have my most recent one, this
12 one, and probably one back.

13 Q. Are you responsible for inputting changes
14 with respect to your team into an organizational
15 chart?

16 A. Yeah.

17 Q. Okay.

18 A. Sorry. Yes.

19 Q. Do you know whether organizational charts
20 greater than, you know, one year exist somewhere in
21 the Sears data warehouse system?

22 A. No.

23 Q. So you don't know?

24 A. I'm not aware of any, no.

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1 Q. Okay. Is there a similar organizational
2 chart that is prepared which would reflect
3 individuals who are on the same reporting level as
4 you who report up to Mr. Mitzner?

5 A. I think there's one about the same age as
6 this one that I did for him.

7 Q. Okay. You indicated that you believe
8 it's about four months old.

9 What on this document leads you to
10 believe it's about four months old?

11 A. Project Manager wasn't filled, and that's
12 now Jason, the third one in.

13 Q. Got it.

14 With respect to Mr. Setzer, is he
15 one of your direct reports?

16 A. Yes.

17 Q. So how does he report to you?

18 A. He's the National Operations Manager.

19 Q. Do you have one-on-one meetings with him?

20 A. Yes.

21 Q. And how often do those occur?

22 A. They're once a month.

23 Q. And are those in person or by phone?

24 A. By phone.

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1 Q. Is there any form of written
2 communication between you and Mr. Setzer that is
3 prepared on a regular basis?
4 A. No.
5 Q. What's your understanding of what
6 Mr. Setzer's responsibilities are as a National
7 Operations Manager?
8 A. He handles the day-to-day operations that
9 might include process changes, RMT, vacation bids,
10 rolling out of a new initiative such as work force
11 management. He also conducts -- goes into the sites
12 every couple of months to work with them and make
13 sure that they're -- work force management and RMT is
14 following processes.
15 Q. Does RMT stand for anything?
16 A. Resource Management.
17 Q. Okay. In the bottom right corner of this
18 organizational chart there's a box that says, Team
19 Responsible for Service Contracts, and it's divided
20 into two. One is Product Development, and the other
21 is Call Center.
22 A. Uh-huh. Yes.
23 Q. Why is there a division like that?
24 A. Because my team is mixed with a variety

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1 of responsibilities, and this PowerPoint was put
2 together to explain my role, and since it's mixed,
3 that was the best way I could explain it.
4 Q. So with respect to Call Center policies
5 and procedures, who from your team is responsible for
6 that topic?
7 A. If it is in regards to outbound and
8 inbound direct mail, that would be between the --
9 the -- depending upon the topic, it's between the
10 Channel Manager, Demi; the Market Segment Manager;
11 and Dannon.
12 Q. And if it has to do with telephone
13 communications, who would be responsible for that?
14 A. It depends on what telephone
15 communications you're referring to.
16 Q. So explain that to me.
17 A. There's the administration side, which is
18 the food loss replacements, those types of things,
19 they do not report into me.
20 And then the -- but the direct mail
21 telemarketing side we support is on my team, so the
22 Call Center applications, the reporting, the process
23 changes. My team supports those.
24 Q. What about with respect to renewals of

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1 Protection Agreements?
2 A. Reaping out to members?
3 Q. Correct.
4 A. That would be on my side.
5 Q. You used the phrase reaching out to
6 members?
7 A. Uh-huh.
8 Q. What does members --
9 A. Oh, sorry. We refer to customers as both
10 customers and members.
11 Q. Okay.
12 A. So I'll interchange those terms.
13 Q. That's okay. I just want to make sure
14 the record is clear.
15 Are you also responsible in any
16 fashion for technician or service visits?
17 A. No.
18 Q. How do you learn of information
19 concerning NPAs purchased through technician or
20 service visits?
21 A. It's on our P&L.
22 Q. And how is it on your P&L? How is it
23 delineated?
24 A. It's a line item on the P&L that's broken

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1 out in total dollars sold.
2 Q. Do you have any responsibility with
3 respect to purchases of NPAs through service or
4 technician visits?
5 A. (Indicating.)
6 MS. HINES: Object to form.
7 MS. GROSS: You have to answer.
8 BY THE WITNESS:
9 A. No, I do not.
10 MS. GROSS: You're shaking your head.
11 THE WITNESS: You can't hear that?
12 (WHEREUPON, there was
13 laughter.)
14 BY THE WITNESS:
15 A. No.
16 BY MS. GROSS:
17 Q. And on the left-hand side of this
18 organizational chart there are three dotted line
19 boxes.
20 A. Yes.
21 Q. What did you mean by the three dotted
22 line boxes?
23 A. That's the products, service contract
24 products in which the Product Managers help support.

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1 Q. Okay. When it says "NPA-FS/AM," what
2 does that mean?
3 A. FS is Sales Floor. Slash AM is
4 aftermarket.
5 Q. Do you know whether there was any form of
6 reporting as a line item for NPAs sold at the Great
7 Indoors stores when they were in existence?
8 A. I'm not aware of any.
9 Q. Do you have any responsibility with
10 respect to marketing of NPAs?
11 A. That's handled by our Marketing team.
12 Q. Okay. During your tenure as Director of
13 Contract -- Service Contracts, do you know who was
14 the person responsible for Marketing?
15 A. Currently it is Stewart Gottesman is the
16 Director for Service Contracts Marketing.
17 Q. Does he also report to Mr. Mitzner?
18 A. No.
19 Q. To whom does he report?
20 A. Matthew Moore.
21 Q. Do you know what Matthew Moore's title
22 is?
23 A. Senior Director of Marketing.
24 Q. Is there an individual with marketing

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1 responsibility who reports to Mr. Mitzner?
2 A. No.
3 Q. Do you have -- strike that.
4 Have you had occasion during your
5 tenure as Director of Service Contracts to see any
6 form of memorandum prepared by the Service Contracts
7 Marketing Department?
8 A. Could you define memorandum prepared?
9 Q. Anything written.
10 A. From the Marketing team?
11 Q. Correct.
12 A. I see creatives and brochures.
13 Q. Do you -- have you had occasion to
14 participate in discussions with members of the
15 Marketing team for Service Contracts concerning NPAs?
16 A. The creatives and those types of things
17 are going to go out on the NPAs, yes.
18 Q. Do you see the communications or
19 information that goes out to NPA customers concerning
20 renewals?
21 A. I see the creative that goes out to them,
22 yes.
23 Q. So when you use the term creative, what
24 do you mean?

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1 A. It's the direct mail piece that is sent.
2 Q. Okay.
3 A. I see the copy that will be used. I
4 don't see specific customer information that is used.
5 Q. Do you provide any comments or suggestion
6 with respect to those creatives -- strike that.
7 Have you provided any comments or
8 suggestion with respect to those creators during your
9 five-year tenure as Director of Service Contracts?
10 A. Yes.
11 Q. Do you recall any in particular, any kind
12 of comments that you've provided in particular?
13 A. We did a creative refresh a year ago and
14 commented just on the layouts of them, the look.
15 Q. I'd like to show you what's been
16 previously marked as Plaintiffs' Exhibit 9.
17 Are you familiar with this document?
18 A. Yes.
19 Q. And what is this document? What's your
20 understanding of what this document is?
21 A. This is the terms and conditions that are
22 used with the Master Protection Agreement from back
23 in the last revision of 2010.
24 Q. Do you know if there has been a revision

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1 since 2010 of the Master Protection Agreement?
2 A. Yes.
3 Q. Do you recall when that revision
4 occurred?
5 A. The last one we did was middle of last
6 year.
7 Q. Do you recall generally what the
8 revisions entailed?
9 A. We have added in -- we changed the food
10 loss coverage on the Master Protection Agreement to
11 go from \$250 per year to \$300 per service incident.
12 We added in and reworded rental
13 reimbursement.
14 We added in a wording of service
15 promise and took out rental reimbursement and added
16 in product specific and up to \$50.
17 And we redid the -- there's a
18 discount -- where it says discount, we say discount
19 and reimbursement, on line Covered Parts.
20 We reworded the no lemon, didn't
21 change the terms of it, it just reworded it in a
22 different way.
23 Q. Do you know if you reworded the
24 Replacement, which is Item No. 8?

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1 A. Yes, that's the one we reworded.

2 Q. Do you recall whether you reworded No. 2,
3 the Eligibility for Coverage?

4 A. I don't -- we -- I'm not positive on that
5 one. We may have.

6 Q. With respect to this Agreement and
7 Paragraph 1 entitled Coverage and Term, there is a
8 quoted term of Covered Product.

9 Do you see that?

10 A. Yeah.

11 Q. What is your understanding as to why
12 there are quotes around Covered Product?

13 MS. HINES: Object to form.

14 BY THE WITNESS:

15 A. Yeah, I don't understand the specific
16 question.

17 BY MS. GROSS:

18 Q. Is Covered Product used in quotes to
19 define something for this Master Protection
20 Agreement?

21 A. It is a way to define that the terms are
22 on the products that are covered under the contract.

23 Q. Okay. And is there anywhere in this
24 agreement which sets forth what products are covered?

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1 A. Would the customer know what products are
2 covered?

3 Q. Correct.

4 A. Is that what you're asking?

5 This is not the -- what they
6 received is a list of products and then the contract.

7 Q. Okay. When you say a list of products,
8 are those the list --

9 A. The Covered Products. Sorry.

10 Q. Sorry.

11 Are those -- what do you mean by
12 that?

13 A. They receive terms and conditions that
14 specify the item that is -- that has the contract,
15 and if it's in-home or carrying coverage is on that
16 terms of the contract along with the duration of the
17 contract.

18 Q. And is there any -- strike that.

19 And the products that are in the
20 agreement that's received by the customer, are
21 they -- how are they delineated?

22 A. There's a list of the type of product,
23 like it will tell them it's a washer or a dryer. I
24 believe it gives them the date of purchase.

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1 Q. And how does Sears have that information
2 with respect to the list of products?

3 A. It's in NPJ.

4 Q. And in NPJ -- strike that.

5 And the products that are in NPJ
6 with respect to a particular customer is based on
7 either information received from the customer for an
8 aftermarket purchase or received from a Sears retail
9 or online?

10 A. Yes.

11 Q. Okay. So, therefore, any product which
12 is listed on a Master Protection Agreement is a
13 covered product?

14 A. Any item that is listed on the terms and
15 conditions is a covered product.

16 Q. In Paragraph 2 of the Agreement there is
17 a section on Eligibility for Coverage.

18 Do you see that paragraph?

19 A. Yes.

20 Q. And the Eligibility for Coverage is
21 limited to products in proper operating condition at
22 the start of coverage and information related -- and
23 I guess correct information related to date
24 purchased.

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1 Do you know if there are any other
2 limitations for eligibility for coverage?

3 A. There are limitations of coverage that
4 are listed under Section 13.

5 Q. Okay.

6 A. Like where the product resides, how it's
7 being used, that would also apply.

8 Q. Do you know if there are any other
9 limitations on Eligibility for Coverage for an NPA
10 that are not included in the terms of the Master
11 Protection Agreement?

12 A. There are some internal criteria that is
13 used for coverage, but once it's sold, unless it's
14 listed under Eligibility or in the Terms and
15 Conditions, it is -- it's after fact.

16 Q. It's after -- I'm sorry. What did you
17 say?

18 A. You don't -- you may use some internal --
19 something internally when you're determining
20 eligibility of coverage, but once it's sold, this is
21 the contract the customer has, and this is what is
22 gone by.

23 Q. Okay. I'd like to show you what has been
24 previously marked as Plaintiffs' Exhibit 11.

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1 Do you have an understanding as to
 2 what this document is?
 3 A. It's an Eligible Brands List.
 4 Q. And what does that mean to you?
 5 A. It means when an Agreement is originally
 6 sold, is it on this list to determine eligibility.
 7 Q. The it meaning a product?
 8 A. Product, yes.
 9 Q. And where does the -- this list reside or
 10 where has this list resided during your tenure as
 11 Director of Service Contracts?
 12 A. It's within the MMI table.
 13 Q. Is there any other information within the
 14 MMI table?
 15 A. It has -- it has brand, it has type of
 16 merchandise, primarily those are the variables that
 17 are in there.
 18 Q. And is this information within the MMI
 19 table available to the Call Center agents?
 20 A. They do receive it in Ciboodle as a
 21 drop-down list.
 22 Q. So the call agents have not received it
 23 in the format in which it is in the Plaintiffs'
 24 Exhibit 11?

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1 A. Not that I'm aware, no.
 2 Q. Okay. In the format in which it resides
 3 in Plaintiffs' Exhibit 11, is it part of a larger
 4 document somewhere?
 5 A. I --
 6 MS. HINES: Object to form.
 7 BY THE WITNESS:
 8 A. I don't know.
 9 BY MS. GROSS:
 10 Q. If you turn to the page Bates numbered
 11 522 of this document, and it's -- the bottom of the
 12 page is captioned or has a line that is underlined
 13 that says, "Sears, K-Mart, the Great Indoors, and
 14 High-End Merchandise."
 15 Do you see that?
 16 A. Uh-huh.
 17 Q. And it reads.
 18 "The following is a list of
 19 merchandise codes and brands sold at Sears, K-Mart,
 20 or Great Indoors (TGI) or are otherwise considered
 21 high-end. These products are eligible for PA
 22 coverage at the time of sale only. You are not able
 23 to sell PAs on these items in the aftermarket."
 24 What's your understanding of what

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1 that means first?
 2 A. It would mean that if it was considered a
 3 high-end, that we would sell it at point of purchase
 4 and not in the aftermarket program.
 5 Q. Okay. Then following that section on the
 6 next page at 523 is a chart.
 7 What does that chart represent?
 8 A. It represents the type of product and
 9 brands.
 10 Q. And are those brands represented on this
 11 page the high-end merchandise brands?
 12 A. Yes.
 13 Q. And do you know how -- is there any kind
 14 of internal coding at Sears to represent that these
 15 brands are high-end merchandise?
 16 A. There's merchandise codes that these
 17 brands would go to.
 18 Q. And do the merchandise codes reside in
 19 some system?
 20 A. NPJ.
 21 Q. Do you know -- I can't remember if I
 22 asked this question, so I apologize.
 23 How long has NPJ been in existence?
 24 A. It was developed and rolled out in 1990,

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1 early 1990.
 2 Q. And is it currently still used today?
 3 A. Yes, primarily with a gooey, which
 4 interfaces on the front of it.
 5 Q. Primary with what kind of interface?
 6 A. Ciboodle is a gooey interface that just
 7 uses NPJ.
 8 Q. Can I ask you for my information what a
 9 gooey interface means?
 10 A. It's like a Web form, and it just has --
 11 it has data pulls that goes back and forth between.
 12 Q. So that the user doesn't necessarily have
 13 to formulate the query for the data pool, but the
 14 software itself does that?
 15 A. Yes.
 16 Q. So the list of products -- not list of
 17 products -- yeah, the list of products and names of
 18 brands on 523 are not eligible for NPA coverage in
 19 the aftermarket; is that correct?
 20 MS. HINES: Object to form.
 21 BY THE WITNESS:
 22 A. They are used to determine eligibility
 23 for the aftermarket.
 24

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1 BY MS. GROSS:
 2 Q. But -- okay. And these -- the list at
 3 523 are for those items and brands which are not
 4 eligible for aftermarket purchase of NPAs?
 5 A. If it's one of these brands, they should
 6 not be eligible.
 7 Q. Okay. Do you recall having any
 8 discussions with anyone at Sears about including in
 9 the Eligibility for Coverage Limitations in the
 10 Master Protection Agreement at Plaintiffs' Exhibit 9
 11 a limitation concerning certain aftermarket products
 12 or brands?
 13 MS. HINES: Object to form.
 14 BY THE WITNESS:
 15 A. I'm not sure I understand the question.
 16 BY MS. GROSS:
 17 Q. Was there ever a discussion with anyone
 18 at Sears about including in the language in the
 19 Master Protection Agreement, Exhibit 9, a reference
 20 to limitations on aftermarket purchases of particular
 21 brands or products?
 22 MS. HINES: Object to form.
 23 BY THE WITNESS:
 24 A. I'm still not understanding the question.

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1 BY MS. GROSS:
 2 Q. Okay. No problem.
 3 So with respect to the merchandise
 4 codes that reside in NPJ with respect to high-end
 5 merchandise, is there a I guess query that you would
 6 do or that you are familiar with to request the list
 7 of products and brands that correspond to high-end
 8 merchandise?
 9 A. Am I aware of any query that's been done?
 10 Q. Yeah.
 11 A. No.
 12 Q. Like how do you find the list of high-end
 13 merchandise that's been coded as such?
 14 MS. HINES: Object to form.
 15 BY THE WITNESS:
 16 A. How do you find?
 17 BY MS. GROSS:
 18 Q. Well, you said that this merchandise
 19 codes that these brands would go into resides in NPJ,
 20 so what did you mean by that?
 21 A. They're in production of NPJ.
 22 When you pull up the customer
 23 record, it gives you the type of merchandise it is,
 24 and it just tells you it's a merchandise, and it

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1 tells you the brand that's in production.
 2 Q. So when a contract is renewed, that's one
 3 of the fields that a Call Center representative
 4 either automatically fills out or inquires of the
 5 customer?
 6 MS. HINES: Object to form.
 7 BY THE WITNESS:
 8 A. The Call Center associate, if it's one of
 9 the merchandise codes that is high-end the agent
 10 would not receive that -- would not -- it's -- a
 11 merchandise code with high-end is not something an
 12 agent is receiving.
 13 It's not eligible for an
 14 aftermarket, so they're not going to -- they're not
 15 going to get any -- the outbound site, if it's a
 16 high-end brand and it's in that merchandise code,
 17 that site isn't going to get anything to make a call
 18 to that customer.
 19 BY MS. GROSS:
 20 Q. It may not be making a call to that
 21 customer, but what if the customer calls in?
 22 A. If they select on that code for that
 23 high-end brand, it will tell them that it's not
 24 eligible.

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1 Q. Okay. Then how have NPAs for high-end
 2 merchandise been renewed?
 3 MS. HINES: Object to form.
 4 BY THE WITNESS:
 5 A. Yeah, I don't know they have been.
 6 BY MS. GROSS:
 7 Q. Okay. So I'm going to show you a
 8 document that's been marked as Exhibit 19 and ask if
 9 you've ever seen this document before?
 10 A. No.
 11 Q. Do you recall seeing this document with
 12 counsel prior to your deposition today?
 13 A. Nope.
 14 Q. Okay. This document sets forth the
 15 number of NPA agreements entered into for high-end
 16 merchandise based on the years of each column.
 17 A. Okay.
 18 Q. Do you know where -- so -- strike that.
 19 This document was produced by Sears
 20 and was -- represents the number of NPA agreements
 21 entered into for high-end merchandise based on the
 22 years of each column, so what is your understanding
 23 of explanation for how NPA agreements for high-end
 24 merchandise brands could have been entered into in

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1 2010, 2011, 2012, 2013, 2014?
 2 MS. HINES: I'll just object to form.
 3 BY THE WITNESS:
 4 A. Can I ask a question since I haven't seen
 5 this before? Just so I understand the -- because I
 6 don't know the query that was used for this.
 7 MS. GROSS: We don't either.
 8 BY THE WITNESS:
 9 A. So I don't know -- is this the year it
 10 was sold or the year it's in force?
 11 BY MS. GROSS:
 12 Q. So I don't -- so based on testimony from
 13 Mr. Setzer yesterday, this was the year it was sold.
 14 A. In the aftermarket?
 15 Q. Yeah.
 16 A. Okay. So the only way that it would get
 17 sold in the aftermarket would be is if we were not
 18 aware of the brand at the time it was sold.
 19 Q. So --
 20 MS. HINES: I'm just going to object to his
 21 testimony from yesterday because I don't know if
 22 that's --
 23 MS. GROSS: Okay. That's fair.
 24 MS. HINES: -- what he said precisely.

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1 MS. GROSS: Okay.
 2 BY MS. GROSS:
 3 Q. So would a -- is it possible that a blank
 4 could have been -- strike that.
 5 Is it possible that a brand name
 6 could have been left -- could have been left blank in
 7 a sale of an aftermarket NPA?
 8 A. I believe it requires a brand.
 9 Q. Okay. So then how could it not -- strike
 10 that.
 11 Your prior response was that it
 12 would not have been known.
 13 So how could it have fallen through
 14 the cracks?
 15 MS. HINES: Object to form.
 16 BY THE WITNESS:
 17 A. You're relying upon the brand in which
 18 that is -- that your confirming with the customer.
 19 BY MS. GROSS:
 20 Q. Okay.
 21 Okay. I'd like to show you what's
 22 been previously marked as Plaintiffs' Exhibit 10.
 23 I will represent to you it is a very
 24 lengthy document, and so the -- it's entitled,

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1 National Inbound Sales NHT Facilitator Guide, so the
 2 table of contents was printed up as well as, you
 3 know, limited pages from this lengthy document.
 4 And I ask you if you've ever seen
 5 this document before?
 6 A. No.
 7 Q. Do you have an understanding as to what a
 8 National Inbound Sales NHT Facilitator Guide is?
 9 A. Yes.
 10 Q. And what's your understanding?
 11 A. It's inbound new hire training.
 12 Q. Okay. And when it uses the term
 13 inbound -- when you use the term inbound new hire
 14 training, what do you mean?
 15 A. It means a service contract where a
 16 customer is calling us and we're not reaching out to
 17 them as a telemarketing to purchase a contract or
 18 have inquiries.
 19 Q. If you know, would this be used to train
 20 someone at an Inbound Call Center?
 21 A. Yes.
 22 Q. Would any of your direct reports be
 23 responsible for reviewing this Facilitator Guide?
 24 A. No.

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1 Q. Do you know what area within Service
 2 Contracts would be responsible for reviewing this
 3 Facilitator Guide?
 4 A. National Training Manager.
 5 Q. And is National Training Manager
 6 responsible for Inbound as well as Outbound Call
 7 Centers?
 8 A. Yes.
 9 Q. And do you know who that person has been
 10 for the past five years?
 11 A. Gina Barbeour.
 12 Q. And to whom does -- strike that.
 13 To whom has Gina reported for the
 14 past five years if you know?
 15 A. She currently reports to Matt Pennies,
 16 but has not reported to him for five years.
 17 Q. Do you know prior to Matt Pennies to whom
 18 she reported?
 19 A. Bill Moehlenkamp, who is no longer with
 20 the company.
 21 Q. And I know you told me this previously,
 22 but what was Matt -- no, you didn't because we
 23 discussed Matt Moore.
 24 What is Matt Pennies title?

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<p style="text-align: right;">Page 106</p> <p>1 A. Senior Director Call Center Operations.</p> <p>2 Q. Does Mr. Pennies report to Mr. Mitzner?</p> <p>3 A. Yes.</p> <p>4 Q. Have you ever heard the term authorized</p> <p>5 brands list?</p> <p>6 A. That's what that would be.</p> <p>7 Q. That you're --</p> <p>8 A. I'm sorry that -- that's what eligible</p> <p>9 brands list would be, which would be the same as the</p> <p>10 authorized.</p> <p>11 Q. As Exhibit 11?</p> <p>12 A. Yes.</p> <p>13 Q. If you would turn to Page 123 of</p> <p>14 Plaintiffs' Exhibit 10, and actually I'll take you</p> <p>15 back a little bit just so you know the context in</p> <p>16 which you're --</p> <p>17 MS. HINES: Excuse me. Did you say this was</p> <p>18 an excerpt?</p> <p>19 MS. GROSS: Yes, it's an 800 page document.</p> <p>20 I didn't feel like killing that many trees.</p> <p>21 MS. HINES: That's all right.</p> <p>22 BY MS. GROSS:</p> <p>23 Q. Page 123 is part of a section beginning</p> <p>24 at 120 entitled Master -- Lesson Master Protection</p> <p>VERITEXT NATIONAL COURT REPORTING COMPANY 215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830</p>	<p style="text-align: right;">Page 108</p> <p>1 was referring to.</p> <p>2 Q. Okay. And so what are those codes?</p> <p>3 I guess is it -- I thought it -- so</p> <p>4 this is -- I'm asking in terms of is it more than</p> <p>5 simply the code HE? Is there a numerical code?</p> <p>6 A. It's the -- the beginning of it is the</p> <p>7 type of merchandise, so if it's Oven, and then at the</p> <p>8 end it has HE.</p> <p>9 Q. Got it.</p> <p>10 So is it -- all merchandise codes</p> <p>11 for high-end merchandise begin with the type of</p> <p>12 product and end with HE?</p> <p>13 A. Yes.</p> <p>14 Q. Got it. Thank you.</p> <p>15 This also has a bullet point that</p> <p>16 says, "A list of eligible Protection Agreement</p> <p>17 products and brands."</p> <p>18 Is that also a way of referring to</p> <p>19 the Eligible Brands List which was marked as</p> <p>20 Exhibit 11?</p> <p>21 A. Yes, which is the same as authorized</p> <p>22 brands.</p> <p>23 Q. Got it. And it says, "It can be found</p> <p>24 online at the PA Resource Center."</p> <p>VERITEXT NATIONAL COURT REPORTING COMPANY 215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830</p>
<p style="text-align: right;">Page 107</p> <p>1 Agreements.</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Do you have any understanding as</p> <p>5 to whether new hires have to go through some kind of</p> <p>6 computerized module, you know, sample training?</p> <p>7 A. They go through training.</p> <p>8 Q. Okay. So included in this section on</p> <p>9 Lesson Master Protection Agreements at 123 is a</p> <p>10 section entitled Agreement Product Eligibility.</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. It's at Bates No. 2761. Sorry. 123 on</p> <p>14 the document, but Bates No. 2761.</p> <p>15 And it has a note for a trainer that</p> <p>16 says, "The Authorized Brands List is covered in more</p> <p>17 detail later in the training."</p> <p>18 The next bullet point says,</p> <p>19 "High-End merchandise products are on file with</p> <p>20 special merchandise codes that will not price via</p> <p>21 Ciboodle."</p> <p>22 So are there different codes for the</p> <p>23 different high-end merchandise?</p> <p>24 A. Yes, those are the merchandise codes I</p> <p>VERITEXT NATIONAL COURT REPORTING COMPANY 215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830</p>	<p style="text-align: right;">Page 109</p> <p>1 A. Yes.</p> <p>2 Q. What is that?</p> <p>3 A. It's an internal intranet that has some</p> <p>4 reference material.</p> <p>5 Q. Do you have any responsibility with</p> <p>6 respect to information included in the PA Resource</p> <p>7 Center?</p> <p>8 A. My team does.</p> <p>9 Q. And what responsibility does your team</p> <p>10 have?</p> <p>11 A. They will go in and make any updates to</p> <p>12 the Resource Center if we've changed something.</p> <p>13 Q. And how are you informed of changes made</p> <p>14 by your team to the PA Resource Center?</p> <p>15 A. They usually will verbally tell me that</p> <p>16 they've made the changes.</p> <p>17 Q. Are there any other departments within</p> <p>18 Service Contracts that are responsible for</p> <p>19 information in the PA Resource Center?</p> <p>20 A. No.</p> <p>21 Q. Okay. Have you also heard of a New Hire</p> <p>22 Training Manual for Retention Associates?</p> <p>23 A. No.</p> <p>24 Q. Have you heard of the term Retention</p> <p>VERITEXT NATIONAL COURT REPORTING COMPANY 215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830</p>

<p style="text-align: right;">Page 110</p> <p>1 Associates?</p> <p>2 A. I'm assuming those are longer-term</p> <p>3 associates. The two together didn't correlate.</p> <p>4 Q. Do you know how -- for how long the</p> <p>5 Authorized Brands List or Eligible Brands List have</p> <p>6 been in existence at Sears?</p> <p>7 A. It has been there longer than I've been a</p> <p>8 Director, and I know if it was there when I was</p> <p>9 Product Manager. I don't know beyond that.</p> <p>10 Q. Do you know who has responsibility for</p> <p>11 updating or reviewing the Eligible Brands List?</p> <p>12 A. The Product Managers along with other</p> <p>13 team members.</p> <p>14 Q. And the Product Managers are those</p> <p>15 individuals we previously discussed who report to</p> <p>16 you?</p> <p>17 A. Yes.</p> <p>18 Q. And how do you learn of changes to the</p> <p>19 Eligible Brands List or Authorized List as it's also</p> <p>20 been referred to?</p> <p>21 MS. HINES: Object to form.</p> <p>22 BY THE WITNESS:</p> <p>23 A. They may tell me in a one-on-one.</p> <p>24</p> <p>VERITEXT NATIONAL COURT REPORTING COMPANY 215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830</p>	<p style="text-align: right;">Page 112</p> <p>1 A. Not this document, no.</p> <p>2 Q. Do you have -- but we previously</p> <p>3 discussed that there is a list available in the</p> <p>4 system of cancellation reasons?</p> <p>5 A. Yes.</p> <p>6 Q. So does this document represent the list</p> <p>7 of cancellation reasons for NPAs of which you're</p> <p>8 aware?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And looking at this document, is</p> <p>11 this a complete list based on your familiarity with</p> <p>12 cancel reasons?</p> <p>13 A. I believe so.</p> <p>14 Q. Okay. Do you know?</p> <p>15 MS. HINES: Was there a Bates number on this</p> <p>16 at one point?</p> <p>17 MS. GROSS: So this is probably another</p> <p>18 document that was produced in Excel spreadsheet, and</p> <p>19 I don't have it at the moment as to what Bates</p> <p>20 number, so it was but it's definitely --</p> <p>21 MS. HINES: Okay. Thanks.</p> <p>22 BY MS. GROSS:</p> <p>23 Q. Have you during your tenure as Director</p> <p>24 of Service Contracts had any discussions with any of</p> <p>VERITEXT NATIONAL COURT REPORTING COMPANY 215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830</p>
<p style="text-align: right;">Page 111</p> <p>1 BY MS. GROSS:</p> <p>2 Q. What is your understanding as to how</p> <p>3 changes to the Eligible Brands List comes about?</p> <p>4 Like how do the Product Managers --</p> <p>5 how do the Product Managers make decisions concerning</p> <p>6 changes to the Eligible Brands List?</p> <p>7 A. Usually with conversations they've had</p> <p>8 with the Engineering Team, Product Engineering Team,</p> <p>9 and the Buyers as new products come into market.</p> <p>10 Q. And so is the Product Engineering Team a</p> <p>11 different segment than -- or reporting segment at</p> <p>12 Sears?</p> <p>13 A. They reported to Home Services. They do</p> <p>14 not report to Gary Mitzner.</p> <p>15 MS. GROSS: Got it. Okay. Let's take a</p> <p>16 quick break.</p> <p>17 (WHEREUPON, a recess was</p> <p>18 had.)</p> <p>19 MS. GROSS: Back on.</p> <p>20 BY MS. GROSS:</p> <p>21 Q. I'd like to show you what's been</p> <p>22 previously marked as Plaintiffs' Exhibit 13.</p> <p>23 Have you ever seen this document</p> <p>24 before?</p> <p>VERITEXT NATIONAL COURT REPORTING COMPANY 215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830</p>	<p style="text-align: right;">Page 113</p> <p>1 your direct reports concerning these cancel reasons?</p> <p>2 A. No.</p> <p>3 Q. Do you recall having any discussions with</p> <p>4 anyone at Sears concerning these cancel reasons?</p> <p>5 A. No.</p> <p>6 Q. Okay. Do you have an understanding as to</p> <p>7 what any of these cancel reasons represent?</p> <p>8 A. I know some of them.</p> <p>9 Q. Which ones do you know?</p> <p>10 A. Well, I mean some of them are pretty</p> <p>11 clear on like change mind, price too high.</p> <p>12 I'm not as familiar with the ones in</p> <p>13 which they use -- when they use coverage</p> <p>14 misunderstood or the technician requested cancel.</p> <p>15 I'm not as familiar with those.</p> <p>16 Q. Okay. Do you have -- have you ever seen</p> <p>17 any report prepared which delineates, you know, the</p> <p>18 number of contracts canceled -- number of Protection</p> <p>19 Agreements canceled based on the various reasons?</p> <p>20 A. Have I ever? I'm sure at some point I</p> <p>21 have seen something. I don't remember when or what</p> <p>22 it was about.</p> <p>23 Q. Okay. Do you recall ever seeing anything</p> <p>24 which explains what each of the canceled reasons are?</p> <p>VERITEXT NATIONAL COURT REPORTING COMPANY 215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830</p>

<p style="text-align: right;">Page 114</p> <p>1 A. No.</p> <p>2 Q. Okay. Would anybody in your team be</p> <p>3 familiar with the existence of any kind of</p> <p>4 explanations for each of the cancel reasons?</p> <p>5 A. I haven't had the conversations with them</p> <p>6 to understand how much they would know.</p> <p>7 Q. Okay. Let me show you what we've</p> <p>8 previously marked as Plaintiffs' Exhibit 14 and ask</p> <p>9 you if -- it's a two-page document, so there's two</p> <p>10 different calculations on this.</p> <p>11 Have you ever seen information</p> <p>12 reported on cancellations in this fashion as set</p> <p>13 forth in Exhibit 14?</p> <p>14 MS. HINES: Object to form.</p> <p>15 BY THE WITNESS:</p> <p>16 A. No.</p> <p>17 BY MS. GROSS:</p> <p>18 Q. Do you have this information available to</p> <p>19 you as cancellations based on -- strike that.</p> <p>20 Do you have an understanding of what</p> <p>21 the first page of this document, which is Bates No.</p> <p>22 3967, represents?</p> <p>23 MS. HINES: Object to form.</p> <p>24</p> <p>VERITEXT NATIONAL COURT REPORTING COMPANY 215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830</p>	<p style="text-align: right;">Page 116</p> <p>1 total percent.</p> <p>2 Q. So you see the line that says "Grand</p> <p>3 Total" as opposed to the breakout line that says</p> <p>4 "NPA"?</p> <p>5 A. Yes.</p> <p>6 Q. And when you say it's percent of</p> <p>7 cancellations to dollars sold, do you see it also</p> <p>8 with respect to the grand totals as to what you see</p> <p>9 based on a monthly basis similar to that which is</p> <p>10 included in this report?</p> <p>11 MS. HINES: Object to form.</p> <p>12 MS. GROSS: Strike that. We'll start again.</p> <p>13 BY MS. GROSS:</p> <p>14 Q. You say you see it as a grand total and</p> <p>15 it's a percent of the dollars sold; is that what you</p> <p>16 just said?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. So is it the same -- so is it the</p> <p>19 same month? So the question is, for example, with</p> <p>20 respect to September 2014, is the analysis performed</p> <p>21 5 percent cancellations in the month of September as</p> <p>22 compared to the dollars sold for agreements in the</p> <p>23 month of September?</p> <p>24 A. I would not know that without seeing how</p> <p>VERITEXT NATIONAL COURT REPORTING COMPANY 215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830</p>
<p style="text-align: right;">Page 115</p> <p>1 BY THE WITNESS:</p> <p>2 A. I would be assuming based upon the</p> <p>3 labeling on the pivot table.</p> <p>4 BY MS. GROSS:</p> <p>5 Q. Okay. And when you use the term pivot</p> <p>6 table, what are you referring to so then we can</p> <p>7 circle back to the last answer?</p> <p>8 A. What is pivot table?</p> <p>9 Q. Yeah.</p> <p>10 A. It's a way of summarizing data.</p> <p>11 Q. So the entire document is called the</p> <p>12 pivot table?</p> <p>13 A. This section is off an Excel pivot table.</p> <p>14 Q. Got it. Thank you.</p> <p>15 So there's a reference to percent of</p> <p>16 net?</p> <p>17 A. Yes.</p> <p>18 Q. Do you have an understanding of what that</p> <p>19 means?</p> <p>20 A. Yeah, it's just -- it's your</p> <p>21 cancellations to your dollars sold.</p> <p>22 Q. Okay.</p> <p>23 A. The totals that I refer to when I see</p> <p>24 monthly canceled, that's what I see is just this</p> <p>VERITEXT NATIONAL COURT REPORTING COMPANY 215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830</p>	<p style="text-align: right;">Page 117</p> <p>1 they ran the query.</p> <p>2 Q. Okay.</p> <p>3 MS. HINES: I'm just going to have -- I'll</p> <p>4 just have a standing objection to the foundation of</p> <p>5 the exhibit.</p> <p>6 MS. GROSS: I do, too. I'll join you in that</p> <p>7 objection.</p> <p>8 BY MS. GROSS:</p> <p>9 Q. Okay. So let's turn to the next page at</p> <p>10 Bates No. 3968.</p> <p>11 And have you ever seen the</p> <p>12 information reported in this format at 3968 before?</p> <p>13 A. I haven't seen this document.</p> <p>14 Have I ever seen something that gave</p> <p>15 cancellations in my tenure? Probably.</p> <p>16 Q. Okay. And the information about dollar</p> <p>17 amounts for cancellations based on product code is</p> <p>18 available from the data warehouse; is that correct?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And it -- the query that is put in</p> <p>21 is able to determine or provide the information</p> <p>22 that's put onto this document -- strike that.</p> <p>23 The information on this document and</p> <p>24 what it displays is dependent upon knowledge of the</p> <p>VERITEXT NATIONAL COURT REPORTING COMPANY 215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830</p>

<p style="text-align: right;">Page 118</p> <p>1 query that's been put in?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. On the top left-hand corner of</p> <p>4 this page on both documents is a chart that says,</p> <p>5 "Fiscal Year, Physical Month, Region, District,</p> <p>6 Selling Unit."</p> <p>7 Do you have an understanding of what</p> <p>8 that top table is?</p> <p>9 A. Yes.</p> <p>10 Q. What is it?</p> <p>11 A. That's a drop down in your pivot table</p> <p>12 that you can sort what you're looking for.</p> <p>13 An example is on the second exhibit,</p> <p>14 Plan Codes says, "NPA." That's the drop down.</p> <p>15 Q. Is there an ability to search based on</p> <p>16 merchandise code?</p> <p>17 A. Not in this query, no.</p> <p>18 Q. Okay. So does this table at the top</p> <p>19 indicate what information is used for query?</p> <p>20 A. It indicates, yeah, the variables that</p> <p>21 were pulled for the query.</p> <p>22 Q. Are you able to tell me based on simply</p> <p>23 the variables that are pulled whether this includes</p> <p>24 information for NPAs sold in stores as well as</p> <p>VERITEXT NATIONAL COURT REPORTING COMPANY 215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830</p>	<p style="text-align: right;">Page 120</p> <p>1 Q. And what area is he or she?</p> <p>2 A. She reports to Gary Mitzner.</p> <p>3 Q. Do you know what area it is called?</p> <p>4 A. I don't remember her title.</p> <p>5 Q. Okay. Does she participate in the staff</p> <p>6 meetings --</p> <p>7 A. Yes.</p> <p>8 Q. -- that Mr. Mitzner holds?</p> <p>9 A. Yes.</p> <p>10 Q. Other than the staff meetings that you</p> <p>11 attend, do you have any other occasions to have</p> <p>12 meetings with Terry?</p> <p>13 A. I may occasionally have a meeting with</p> <p>14 her.</p> <p>15 Q. Okay. I'm going to show you what's been</p> <p>16 marked as Plaintiffs' Exhibit 17 and ask if you've</p> <p>17 ever seen this document?</p> <p>18 A. No.</p> <p>19 Q. Have you ever seen a document which</p> <p>20 reports information, cancellations, and includes, you</p> <p>21 know, agreement start date, agreement expiration</p> <p>22 date?</p> <p>23 A. Have I ever seen --</p> <p>24 Q. Any kind of information reported on</p> <p>VERITEXT NATIONAL COURT REPORTING COMPANY 215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830</p>
<p style="text-align: right;">Page 119</p> <p>1 aftermarket sales of NPAs?</p> <p>2 A. Not without seeing what's behind the All.</p> <p>3 Q. Okay. And when you say -- when you say</p> <p>4 All, which All are you referring to?</p> <p>5 A. When it drops down, it says "Selling</p> <p>6 Organization," so it's all.</p> <p>7 Q. Okay.</p> <p>8 A. I don't --</p> <p>9 Q. That's what would indicate whether it's</p> <p>10 point of sale versus aftermarket?</p> <p>11 A. Yeah. Yeah, without seeing what's in</p> <p>12 there, I don't know.</p> <p>13 Q. Does the cancel reasons codes that are</p> <p>14 listed -- do the cancel reasons codes that are listed</p> <p>15 in Exhibit 13 also cover buyouts do you know?</p> <p>16 A. I don't know.</p> <p>17 Q. Who has -- you said you didn't -- strike</p> <p>18 that.</p> <p>19 Do you have any responsibility for</p> <p>20 buyouts of NPAs?</p> <p>21 A. No.</p> <p>22 Q. Who or what department has responsibility</p> <p>23 for buyouts of NPAs?</p> <p>24 A. Terry Jamel.</p> <p>VERITEXT NATIONAL COURT REPORTING COMPANY 215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830</p>	<p style="text-align: right;">Page 121</p> <p>1 cancellations which includes, you know, the agreement</p> <p>2 start date from customers as well as agreement</p> <p>3 expiration dates?</p> <p>4 A. I'm sure I have at some point.</p> <p>5 Q. Okay. Have you ever seen information</p> <p>6 which reports on cancellations and the method of</p> <p>7 refund of those cancellations?</p> <p>8 A. Such as the one here?</p> <p>9 Q. Correct.</p> <p>10 A. No.</p> <p>11 Q. With respect to this document, there's a</p> <p>12 column entitled, Division?</p> <p>13 A. Yes.</p> <p>14 Q. Do you have any understanding as to what</p> <p>15 that refers?</p> <p>16 A. It's product groupings.</p> <p>17 Q. And so what is your understanding of what</p> <p>18 product groupings is?</p> <p>19 A. As an example, Division 26 would mean</p> <p>20 it's Laundry.</p> <p>21 Q. Okay. So is Laundry a washer and dryer?</p> <p>22 A. Correct.</p> <p>23 Q. So when an NPA for a washer or dryer is</p> <p>24 canceled, does the system automatically -- strike</p> <p>VERITEXT NATIONAL COURT REPORTING COMPANY 215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830</p>

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1 that.

2 When an NPA for a washer or dryer is

3 purchased, does the system automatically generate a

4 division number?

5 A. Yes.

6 Q. Okay. And is information -- when an NPA

7 Agreement is purchased -- strike that.

8 Do you have any knowledge of how a

9 customer is informed that an NPA has been canceled?

10 A. Usually it's a conversation with the

11 customer.

12 Q. Have you ever had any conversations with

13 any customers concerning cancellation of their NPA?

14 A. No.

15 Q. Have you ever had conversations with any

16 of your direct reports concerning cancellations by

17 particular customers of NPAs?

18 A. No.

19 Q. Have you ever had any conversations with

20 anyone concerning the Plaintiffs' situation in this

21 case?

22 A. No.

23 Q. Do you have any understanding as to

24 whether similar types of information, such as dollar

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1 amount, product is available in the data warehouse

2 for buyouts of NPAs?

3 A. It would not be -- I'm not aware that the

4 buyouts go to the warehouse.

5 Q. Do you know where information on buyouts

6 of NPAs goes?

7 A. No.

8 Q. Do you know the process by which an NPA

9 is canceled?

10 A. Like how it gets canceled in the system?

11 Q. Correct or -- yes, in general, yes.

12 A. The agent would use Ciboodle and put in

13 what is being canceled and whether it's a full

14 cancellation or if it's a partial cancellation, and

15 then the system will determine the refund amount and

16 then how to -- how it's to be refunded.

17 Q. And is there any ability to determine

18 whether the cancellation has occurred by the customer

19 or by Sears?

20 A. By Sears?

21 Q. Like Sears made the determination to

22 cancel the NPA?

23 A. As part of a buyout? Is that?

24 Q. Well, strike that.

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1 So are all -- let me take a step

2 back.

3 Are all cancellations made based on

4 decisions of customers.

5 A. The only time in which a cancellation

6 that can occur that is not a decision of the customer

7 is within the contract terms.

8 Q. And what do you mean by that?

9 A. If you go to the contract itself --

10 Q. Which was Bates numbered Plaintiffs'

11 Exhibit 9.

12 MS. HINES: You read the exhibit number.

13 MS. GROSS: Not Bates number. Which is

14 marked as Plaintiffs' Exhibit 9. Sorry.

15 BY THE WITNESS:

16 A. Item 14, it specifies when the company

17 can cancel.

18 BY MS. GROSS:

19 Q. Got it. Okay.

20 And so when you see information on

21 cancellations --

22 A. Yes.

23 Q. -- does it delineate as to whether it's a

24 customer cancelling or Sears cancelling?

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1 A. No, because all I've seen is that rolled

2 up percent.

3 MS. HINES: Object to form.

4 BY MS. GROSS:

5 Q. I would like to show you what's been

6 previously marked as Plaintiffs' Exhibit 20A.

7 Have you ever seen a report like

8 this before?

9 A. No.

10 Q. Have you seen a report which sets forth

11 information on replacements of products covered by

12 NPAs?

13 A. I'm sorry. What was the question again?

14 Q. Have you seen any reports which set forth

15 information on replacements of products covered by

16 NPAs?

17 A. The only reporting I get on replacements

18 is that weekly report.

19 Q. Okay. Then I'm done with that exhibit.

20 Do you have any familiarity with how

21 Sears determines what it will charge for an NPA?

22 A. Yes.

23 Q. And how is that determination made?

24 A. We start with the point of sale, retail

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1 point of sale, and we use a regression model and --
2 that determines guides in the pricing, and then the
3 aftermarket pricing follows that.

4 **Q.** When you say the aftermarket pricing
5 follows that, what do you mean?

6 **A.** So once you set the price in the sales
7 floor, you know how much you're going to charge and
8 you do that and you know how much per year and then
9 you just follow the same pricing into the
10 aftermarket.

11 So you start at that same point and
12 then take it forward.

13 **Q.** So how is pricing determined on a product
14 that was not -- that is not sold at Sears?

15 **A.** It would be in relation to ship-to
16 products that are similar to what is sold at Sears.

17 **Q.** Is there any other information that's
18 taken into the calculation for pricing of NPAs?

19 **A.** The regression model uses a relationship
20 between the purchase price of the product and the
21 service contract price.

22 **Q.** Is the age of a product taken into
23 consideration in the regression model?

24 **A.** Not in the regression model, no.

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1 **Q.** Is the age taken into consideration in
2 any way in pricing an NPA?

3 **A.** The pricing will slightly change with the
4 age of the product.

5 **Q.** And how -- how is that determination
6 made?

7 **A.** Based upon -- it was done before I had
8 that pricing piece.

9 **Q.** So it's some software or regression
10 analysis that's automatically done?

11 **A.** Based upon prior analysis, yes.

12 **Q.** Does the pricing of an NPA change based
13 on whether a product has been serviced before?

14 **A.** No.

15 **Q.** Okay. Is there any written list of
16 prices for an NPA based on a -- set forth on a
17 product basis like washing machines are typically in
18 this range?

19 **A.** The only -- in a written form the only
20 place we have anything that's in a written form is
21 the sales floor pricing. The aftermarket pricing is
22 all system.

23 **Q.** When you say sales floor pricing, at a
24 Sears store available to an employee is a list of NPA

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1 pricing?

2 **A.** They can get to it, but their register
3 tells them the price.

4 **Q.** Are you aware of any discussions within
5 your group concerning the need to inspect products
6 that -- for which NPAs have been entered into?

7 **MS. HINES:** Object to form.

8 **BY THE WITNESS:**

9 **A.** No.

10 **BY MS. GROSS:**

11 **Q.** Is there any kind of analysis of the
12 number of inspections of products for which NPAs have
13 been entered into?

14 **MS. HINES:** Object to form.

15 **BY THE WITNESS:**

16 **A.** I don't know what you mean by
17 inspections.

18 **MS. GROSS:** Okay. Let me try it a different
19 way.

20 **BY MS. GROSS:**

21 **Q.** In the NPA agreement Sears reserves the
22 right to inspect a product.

23 Do you recall that?

24 **A.** Yes.

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1 **Q.** Okay. So has there ever been any
2 discussions at Sears or within your group about Sears
3 performing such inspections?

4 **A.** No.

5 **Q.** Okay. Do you know if any such
6 inspections of products for which NPAs have been
7 entered into have been done other than when a service
8 call is made?

9 **A.** That we would just go out to inspect?

10 **Q.** Correct.

11 **A.** No, we would not.

12 **Q.** So the only time Sears performs an
13 inspection of a product for which an NPA has been
14 purchased is when a Sears -- when a service call has
15 been made?

16 **A.** Correct.

17 **Q.** Okay. Have you heard of a person named
18 Sujatha?

19 **A.** Yes.

20 **Q.** And have you had any dealings with her?

21 **A.** Uh-huh.

22 **Q.** For what purpose?

23 **A.** If I want her to assist with a query.

24 **Q.** Okay. And do you know what type of query

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<p style="text-align: right;">Page 130</p> <p>1 you have asked her to do for you?</p> <p>2 A. I will ask her to do some internal</p> <p>3 operations like where the -- like how -- when the</p> <p>4 customer is responding what was driving the response,</p> <p>5 like was it technician, or was it one of our</p> <p>6 telemarketing calls, or was it an inbound activity,</p> <p>7 direct mail, those types of queries.</p> <p>8 Q. And when you ask her to perform that type</p> <p>9 of query, what is the format of her report to you?</p> <p>10 A. Excel.</p> <p>11 Q. And is there any queries that you have</p> <p>12 asked her to perform on any type of regular basis?</p> <p>13 A. No.</p> <p>14 Q. Okay. I'm going to show you what has</p> <p>15 been previously marked -- it's</p> <p>16 Plaintiffs' Exhibit 15, which is another unfortunate</p> <p>17 quality that's not the best, and it is comprised of</p> <p>18 two pages of information which actually look very</p> <p>19 similar in form.</p> <p>20 Have you ever seen a document</p> <p>21 similar to this?</p> <p>22 A. No.</p> <p>23 Q. Do you know what department or area from</p> <p>24 which this emanates?</p> <p>VERITEXT NATIONAL COURT REPORTING COMPANY 215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830</p>	<p style="text-align: right;">Page 132</p> <p>1 (Whereupon, at 1:34 p.m.</p> <p>2 the deposition was</p> <p>3 concluded.)</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>VERITEXT NATIONAL COURT REPORTING COMPANY 215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830</p>
<p style="text-align: right;">Page 131</p> <p>1 A. I can't read all of the offers, but it</p> <p>2 would look like it came from a home services</p> <p>3 marketing team.</p> <p>4 Q. Are you aware that after a service</p> <p>5 technician's visit there is a communication with a</p> <p>6 customer?</p> <p>7 A. Yes.</p> <p>8 Q. What -- how do you find out about that</p> <p>9 information?</p> <p>10 A. There's a communication that goes to the</p> <p>11 customer on kind of a survey, NPS survey scores, and</p> <p>12 there may be a communication to them if the product</p> <p>13 is uncovered that had service, it was uncovered, and</p> <p>14 it's eligible for coverage.</p> <p>15 Based upon that information, there</p> <p>16 may be a direct mail offer to them or a telemarketing</p> <p>17 offer.</p> <p>18 MS. GROSS: Okay. I think that's all the</p> <p>19 questions I have.</p> <p>20 MS. REPORTER: Are you ordering the</p> <p>21 transcript at this time?</p> <p>22 MS. GROSS: Yeah.</p> <p>23 MS. REPORTER: Would you like a copy?</p> <p>24 MS. HINES: Yes. And reserve signature.</p> <p>VERITEXT NATIONAL COURT REPORTING COMPANY 215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830</p>	<p style="text-align: right;">Page 133</p> <p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE NORTHERN DISTRICT OF ILLINOIS</p> <p>3 EASTERN DIVISION</p> <p>4 NINA GREENE AND GERALD)</p> <p>5 GREENE,)</p> <p>6 Plaintiffs,)</p> <p>7 vs.) No. 1:15-CV-02546</p> <p>8 SEARS PROTECTION COMPANY,)</p> <p>9 SEARS ROEBUCK AND CO. AND)</p> <p>10 SEARS HOLDINGS)</p> <p>11 CORPORATION,)</p> <p>12 Defendants.)</p> <p>13 I hereby certify that I have read the</p> <p>14 foregoing transcript of my deposition given at the</p> <p>15 time and place aforesaid, consisting of Pages 1 to</p> <p>16 132, inclusive, and I do again subscribe and make</p> <p>17 oath that the same is a true, correct and complete</p> <p>18 transcript of my deposition so given as aforesaid,</p> <p>19 and includes changes, if any, so made by me.</p> <p>20</p> <p>21 KATRINA MEANS</p> <p>22 SUBSCRIBED AND SWORN TO before me</p> <p>23 this day of 2016.</p> <p>24 Notary Public</p> <p>VERITEXT NATIONAL COURT REPORTING COMPANY 215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830</p>

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1 CERTIFICATE
2 OF
3 CERTIFIED SHORTHAND REPORTER
4

5 I, Lynn A. McCauley, a Certified
6 Shorthand Reporter of the State of Illinois, CSR,
7 RPR, License No. 84-003268, do hereby certify:

8 That previous to the commencement of the
9 examination of the aforesaid witness, the witness was
10 duly sworn by me to testify the whole truth
11 concerning the matters herein;

12 That the foregoing deposition transcript
13 was reported stenographically by me, was thereafter
14 reduced to typewriting under my personal direction
15 and constitutes a true and accurate record of the
16 testimony given and the proceedings had at the
17 aforesaid deposition;

18 That the said deposition was taken before
19 me at the time and place specified;

20 That I am not a relative or employee or
21 attorney or counsel for any of the parties herein,
22 nor a relative or employee of such attorney or
23 counsel for any of the parties hereto, nor am I
24 interested directly or indirectly in the outcome of

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1 this action.

2 IN WITNESS WHEREOF, I do hereunto set my
3 hand at Chicago, Illinois, this 14th day of July
4 2016.

5

<%Signature%>

6

7 _____
8 LYNN A. MC CAULEY, CSR, RPR
9 License No. 84-003268

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EXHIBIT 5
SUBJECT TO CONFIDENTIALITY
ORDER
DATED JULY 29, 2015